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ADEQUACY OF BONDS TO ENSURE RECLAMATION OF SURFACE MINES

COMPLETED
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ORIGINAL

HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

JUNE 26, 1986

Printed for the use of the Committee on Government Operations

U.S. GOVERNMENT PRINTING OFFICE
62-120 O WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
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ADEQUACY OF BONDS TO ENSURE RECLAMATION OF SURFACE MINES

THURSDAY, JUNE 26, 1986

HOUSE OF REPRESENTATIVES,
ENVIRONMENT, ENERGY,
AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:02 a.m., in room 2203, Rayburn House Office Building, Hon. Mike Synar (chairman of the subcommittee) presiding.

Present: Representatives Mike Synar, Robert E. Wise, Jr., and Richard K. Armey.

Also present: W. Donald Gray, staff director; Kathryn J. Seddon, counsel; Sheila Cash, staff assistant; and James B. Tapper, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN SYNAR

Mr. SYNAR. The subcommittee will come to order. Today, the subcommittee examines the adequacy of bonds to assure reclamation of abandoned surface coal mines.

Section 509 of the Surface Mining Control and Reclamation Act of 1977 requires as a condition of issuing a permit to mine coal, that operators post a bond which must be adequate to assure reclamation in case it is forfeited and the reclamation work has to be performed by the regulatory authority.

That sounds simple enough.

In fact, there are serious problems with the bonding program. On the one hand, irate landowners and citizens living near unreclaimed mines abandoned after 1977 cannot understand why sites with environmental damage and potential safety hazards are not reclaimed.

They thought they were protected by the Federal law, as well as the bond posted by the mine operator. On the other hand, irate coal operators, facing hard economic times, aren't happy with certain regulatory requirements, bonding costs and occasional difficulty in obtaining bonds.

Caught in the middle are the State regulatory authorities and the Office of Surface Mining—Reclamation and Enforcement, which have the responsibility for making the surface mine law work.

Two years ago, after listening to some very unhappy landowners with unreclaimed land in Oklahoma, I asked the General Account-

ing Office to examine the bonding program. At my request, they published a report on Oklahoma first.

That report contains some very disturbing information. Numerous sites in two Oklahoma counties were abandoned after enactment of SMCRA, with no reclamation and in most of those cases, there were serious problems with collection of the bonds.

It also appeared that even if the bonds were collected they would be inadequate to ensure reclamation.

Now, GAO has now completed its work on bonding in other States, and today will report their findings.

We also want to hear from OSMRE about what they have done to solve the bonding problems. Upon publication of the GAO Oklahoma report last August, I wrote Director Jed Christensen these following words:

> What the data strongly suggests is that a cooperative and intensive effort among Federal and State officials, soil conservation experts and mining and bonding industry leaders will be required to solve the problems of "bonded" yet abandoned and unreclaimed mine sites. Therefore, this is a unique opportunity to exercise aggressive and effective leadership to overcome potentially divisive disagreements among concerned parties and develop workable solutions.

In November, the Office of Surface Mining declared that there was a bond crisis which, if not remedied, could have a devastating effect. More recently, OSMRE officials acknowledged that bonding problems have been exacerbated by insufficient enforcement and inspection while site reclamation is underway.

I want to find out what, if any, progress they have made. Today, we will focus primarily on the bond adequacy. We will examine the availability of bonds at a later date when GAO completes additional work undertaken at my request.

At this time, I would like to call on Bob Wise from West Virginia, one of the States that GAO will be reporting on today for any opening statements he might have.

Mr. WISE. Mr. Chairman, you said. Good statement. They are my views entirely. I am concerned, of course, West Virginia being one of the States that GAO chose to look at. That has obvious interest to me, but I think the overall question of the bonding, and what particularly concerns me, Mr. Chairman, and perhaps we can discuss a little bit here, there seems to be a gap, a hole, in the law between 1977 and whenever a State achieved primacy. What are we going to do about that?

So, I think it is a very timely hearing, and look forward to participating in it.

Mr. SYNAR. Thank you, Bob. And at this time I will ask unanimous consent that the minority and any other opening statements may be made part of the record. We have two panels this morning. The first panel, and I am going to apologize right off the top. Michael, I am going to do my best in pronouncing your name.

We will have Michael Gryszkowiec.

Mr. GRYSZKOWIEC. That is pretty close, Mr. Chairman.

Mr. SYNAR. All right. He is Associate Director, Resources, Community, and Economic Development Division of GAO, and he is accompanied by Doris Cannon, Frank Imbrogno, and Darryl Wittenburg. From the Washington office, Doris; Pittsburgh office, Frank and Darryl.

As all of you may be aware, in order to not prejudice past, present, or future witnesses, we swear all our witnesses in. Do any of you have any objections to being sworn in? If not, please raise your right hand.

[Witnesses sworn.]

Mr. SYNAR. Thank you very much. Welcome this morning, and before we start, I will do this again at the end, but I want to take this opportunity to personally thank you. As always, the GAO has done a spectacular job with this report. You have worked long and hard hours, and I think that we are going to learn a lot from your report this morning, and I deeply appreciate the commitment that you have made, because you have been the watchdog that this agency has needed, and I think this report of what you are about to tell us is an indication of the problems that we do face, and I thank you personally, and the subcommittee does, too.

STATEMENT OF MICHAEL GRYSZKOWIEC, ASSOCIATE DIRECTOR, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY DORIS CANNON, WASHINGTON OFFICE, AND FRANK IMBROGNO AND DARRYL WITTENBURG, PITTSBURGH OFFICE

Mr. GRYSZKOWIEC. Thank you, Mr. Chairman. What I would like to do is summarize my statement, and have the entire statement submitted for the record.

Mr. SYNAR. Without objection, that will be done.

Mr. GRYSZKOWIEC. Thank you. We are glad to be here today to discuss our ongoing work and tentative observations in response to your request that we review the bonding systems used for funding the reclamation of strip mined land in Pennsylvania and West Virginia.

We plan to complete our work and report our findings to you within the next several months.

Our work to date shows that in Pennsylvania, and to a lesser extent in West Virginia, large acreages of unreclaimed mined lands exist. Most of this land was mined under the provisions of each State's interim program.

We found that the land remains unreclaimed, in part, because of the lengthy reclamation process. The average time from bond forfeiture to completed reclamation averaged 4 years in Pennsylvania and 2 years in West Virginia.

In addition, existing bonds have not been adequate to reclaim all of the interim program forfeiture lands. State estimates to reclaim these lands exceed presently available funding by nearly $100 million in Pennsylvania, and about $3 million in West Virginia.

OSM's involvement in getting these lands reclaimed has been limited, since they believe that the interim program forfeitures are the States' responsibility.

OSM believes that it is only responsible for assuring reclamation of permanent program mined lands. However, the adequacy of the permanent program bonding systems in both Pennsylvania and West Virginia is not known because no formal criteria currently exists within OSM for assessing their adequacy. As a result, it is

not known at this time whether these bonding systems will be adequate to reclaim all future forfeiture sites.

Lastly, both States generally complied with the procedural requirements for releasing bonds. However, in our visits to selected bond release sites with OSM inspectors, the inspectors identified three sites with reclamation deficiencies which raised questions about the appropriateness of the bond release.

I would now like to go into a little more detail on some of our work so that you may have a better understanding of some of the statistics involved. In Pennsylvania, we found that, since SMCRA was passed, the bonds on 22,450 acres, almost all from the interim period, have been forfeited in Pennsylvania. Over 67 percent of these acres, about 15,000, have not been reclaimed.

A number of reasons account for this. Perhaps the major factor is that over 66 percent of the acres involved have been appealed to Pennsylvania's Environmental Hearing Board by the bond company or the operator.

A board ruling has been made on less than half of these acres, and in each case—this is over 6,000 acres—the board ruled in favor of the State.

The average amount of time from bond forfeiture to a board ruling has taken over 16 months. State regulatory officials see the high rate of appeals to the board as a delaying tactic used by the holder of the bonds to collect several years of additional interest.

According to State regulatory officials, some consideration is being given to having the bond money held in escrow pending a board ruling, but they say that surety companies have indicated an unwillingness to bond coal companies if this practice is instituted.

Another factor contributing to the lengthy reclamation process is the time needed for collecting the bond. In Pennsylvania, the average amount of time to collect the bond has been about 8 months.

Getting the reclamation performed after the bonds are collected also adds time to the overall process. For the acreages on which the State has completed reclamation, it took an average of 41 months to reclaim the land after the bond was collected.

Overall, in Pennsylvania it took an average of about 4 years to complete reclamation after forfeiting the bond. However, we feel that this is a conservative figure, since it does not fully reflect the impact of the 16 months required for the environmental hearing board appeal because about 94 percent of the reclaimed lands in Pennsylvania to date have not been appealed.

In addition, our work in Pennsylvania shows that the State has reclaimed some lower priority sites before reclaiming all of the sites ranked as high priority. Priority sites are those which present a significant and continued hazard to human life, or a significant threat to health and safety.

Over 1,800 high priority acres currently remain unreclaimed, while about 400 low priority acres were reclaimed by the State. A State official acknowledged that this occurred in earlier years because reclamation was controlled more by citizen complaints and political pressure than by environmental damage. The official stated that the current policy is to concentrate on high priority sites.

In West Virginia, reclamation of bond forfeiture lands is better than in Pennsylvania, but still not problem-free. Over 70 percent of the approximately 6,700 acres involved in bond forfeiture proceedings have been reclaimed, or are in the process of being reclaimed.

In general, reclamation in West Virginia is more timely than in Pennsylvania because of the low rate of appeals filed by mine operators in the State. Unlike Pennsylvania, where bond forfeiture actions on over 66 percent of the acres are appealed, only about 4 percent are appealed in West Virginia.

West Virginia officials told us that surety companies in West Virginia are not allowed to appeal. Only mine operators can file an appeal, but they seldom do. Overall, in West Virginia the average time from bond forfeiture to completed reclamation has been less than 2 years.

OSM's involvement in getting the interim program sites in either State reclaimed has been limited. OSM's position is that the interim program forfeitures are the States responsibility. OSM officials stated that their role is to oversee the States' programs for active mining operations, and to get the permanent program bond forfeiture sites reclaimed.

However, we found that OSM, in approving the permanent programs, did not study the interim program problems and use this experience to prevent similar problems under the permanent program. The same lengthy process for achieving reclamation of interim program sites is now being applied to the permanent program sites.

OSM officials told us that permanent program forfeiture sites take priority over interim sites. However, the OSM officials acknowledged that this may result in States reclaiming lower priority permanent program sites before reclaiming higher priority interim program sites.

Now I would like to briefly address the adequacy of bonds.

The State bonds covering the interim program sites have not been adequate to cover the cost of State reclamation in either Pennsylvania or West Virginia. Both States have had to use money from their permanent program supplemental funds to reclaim some of the sites.

However, there are extensive shortfalls in funding for the remaining interim program sites, especially in Pennsylvania.

Specifically, the bonds on 521 mine sites, covering 22,450 acres, have been forfeited in Pennsylvania. Of this acreage, about 1,300 acres have been either reclaimed or have been awarded reclamation contracts by the State. About another 1,000 acres have been reclaimed by the surety company. All of the reclaimed land in Pennsylvania has been from the interim period. None of the permanent program bond forfeiture lands have been reclaimed yet.

For the acreage reclaimed by the State, the average reclamation cost per acre has been about $6,200, while the average bond amount per acre has been about $730. Therefore, the amount of bond forfeited has equaled about 12 percent of the cost of reclamation.

The amount of bond money available to reclaim these acres was approximately $1 million.

The cost of reclamation, however, totaled about $8 million requiring over $7 million in supplemental funds to be used from the State's permanent program fund.

We found that Pennsylvania's reclamation fund is presently not sufficient to reclaim the remaining 15,000 interim program acres. An internal study prepared by the State in October 1985, showed that, by its own estimate, over $110 million would be needed to reclaim all of its existing interim period sites.

Furthermore, in 1984 the State estimated that at the current expenditure rate of $2 million per year, it would take over 45 years to clean up the interim period problem.

In West Virginia, bonds on 269 mine sites, involving 6,700 acres, have been forfeited. Our analysis shows that of the 6,700 acres, about 2,900 have been either awarded contracts or reclaimed by the State. Another 1,900 were reclaimed by the surety companies. With the exception of about 400 acres, all of the reclaimed land, again, is from the interim period.

Compared with Pennsylvania, where the amount of bond has equaled about 12 percent of the cost of reclamation, the percentage in West Virginia has equaled about 46 percent on interim period reclaimed sites, and 40 percent on permanent program sites.

The average reclamation cost per acre for the reclaimed acres has been about $2,500, while the average bond amount has been about $1,100. Like Pennsylvania, a substantial amount of the money needed to reclaim these sites—about $4 million—has come from the permanent program fund.

In November 1985, West Virginia estimated that about $9 million will be needed to reclaim the interim program lands. As of December 1985, the State reclamation fund had a balance of $5.7 million. On the basis of their analysis of the fund, State officials believe that the fund will generate enough money to reclaim all interim program mined lands, but they could not tell us how long this would take.

What is not known in either Pennsylvania or West Virginia, is whether the permanent program bonding system is adequate to reclaim all future permanent program bond forfeiture sites. OSM's involvement in assessing the adequacy of these bonding systems has been limited. Bonding system adequacy has not been addressed by OSM in any of its annual State oversight reviews, but this has been included as an objective for its current 1986 reviews. The 1986 review is ongoing, and results are expected later this year.

The OSM Assistant Director for Operations told us that alternative bonding systems, if properly designed, are an excellent idea. He acknowledged, however, that proper design has not been agreed upon within OSM, nor has criteria been developed for assessing fund adequacy.

Consequently, although OSM approved the alternative bonding systems in both Pennsylvania and West Virginia, these systems have never been "modeled" to assure fund adequacy for reclamation of future potential bond forfeiture sites.

We feel that unreclaimed lands create serious environmental and public health problems. Our work to date suggests that OSM, as the lead Federal agency in this area, is the logical focal point to develop an approach for resolving this problem.

I am also hoping that these hearings can help focus attention on this problem.

This concludes my statement, Mr. Chairman. What I would like to do now is take a few minutes to show you slides of some of the sites that we visited. They provide evidence of the environmental damage that results from unreclaimed coal mined lands. Soil erosion, water pollution, hazards to public health and safety, and reduction in property values are some of the most obvious problems.

We will be glad to answer questions during and after the slides.

[The prepared statement of Mr. Gryszkowiec follows:]

United States General Accounting Office
Washington, D.C. 20548

FOR RELEASE ON DELIVERY
EXPECTED AT 9:30 A.M.
JUNE 26, 1986

STATEMENT OF

MICHAEL GRYSZKOWIEC, ASSOCIATE DIRECTOR

RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT, ENERGY

AND NATURAL RESOURCES

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

ON THE

BONDING SYSTEMS FOR RECLAMATION

OF STRIP-MINED LANDS IN PENNSYLVANIA AND WEST VIRGINIA

Mr. Chairman and Members of the Subcommittee:

We are glad to be here today to discuss our ongoing work and tentative observations in response to your request that we review the bonding systems used for funding the reclamation of strip-mined land in Pennsylvania and West Virginia. We plan to complete our work and report our findings to you within the next several months. We selected these states, with your agreement, because they have a large number of sites on which the bonds have been forfeited and because they are two of the largest coal-producing states. Also, as you know we issued a report addressing the Oklahoma bonding system on August 8, 1985. Our findings in Oklahoma are described briefly in the attachment.

The three major bonding issues that we addressed in the two states are (1) reclamation procedures after bond forfeiture, (2) the adequacy of the funds provided by the bonding systems, and (3) the appropriateness of bond releases. Our review of these issues covered the period from the passage of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) through December 1985.

In addressing each of the issues it is important to understand that under SMCRA, two time periods prevail. The first period--known as the interim program period--covered the time from passage of SMCRA up to the time the states obtained primary regulatory authority. During this period, bonding for coal mine operations were controlled by existing state law. There was no federal bonding requirement imposed by the Office of Surface Mining Reclamation and Enforcement (OSMRE). The latter period--known as the permanent program period--started when the states received primary responsibility for carrying out the provisions of SMCRA.[1] At this point, the bonding systems were required to be approved by OSMRE and the role of OSMRE became one of overseeing the approved state programs.

Our work to date shows that, in Pennsylvania and to a lesser extent in West Virginia, large acreages of unreclaimed mined land exist. Most of this land was mined under the provisions of each state's interim program. We found that the land remains unreclaimed, in part, because of the lengthy reclamation process. The average time from bond forfeiture to completed reclamation averaged 4 years in Pennsylvania and 2 years in West Virginia.

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[1]Pennsylvania obtained primacy on July 31, 1982; West Virginia on January 21, 1981.

In addition, existing bonds have not been adequate to reclaim all of the interim program forfeiture lands. State estimates to reclaim these lands exceed presently available funding by nearly $100 million in Pennsylvania and about $3 million in West Virginia. OSMRE's involvement in getting these lands reclaimed has been limited since they believe that interim period forfeitures are the states' responsibility. OSMRE believes that it is only responsible for assuring reclamation of permanent program mined lands. However, the adequacy of the permanent program bonding systems in both Pennsylvania and West Virginia is not known because no formal criteria or methodology currently exists within OSMRE for assessing their adequacy. As a result, it is not known at this time whether these bonding systems will be adequate to reclaim all future forfeiture sites.

Lastly, both states generally complied with the procedural requirements for releasing bonds. However, in our visits to selected bond release sites with OSMRE inspectors, the inspectors identified 3 sites with reclamation deficiencies which raised questions about the appropriateness of the bond release.

HAVE BOND FORFEITURE LANDS BEEN RECLAIMED AND, IF SO, HOW MUCH?

Reclamation of mined coal lands is one of the major aims of SMCRA. In Pennsylvania, reclamation has been slow. West Virginia has been more successful than Pennsylvania; but overall, unreclaimed land exists in both states.

First, I would like to discuss reclamation of bond forfeiture lands in Pennsylvania. We found that, since SMCRA

was passed, the bonds on 22,450 acres--22,381 from the interim period--have been forfeited in Pennsylvania and over 67 percent of the total acreage (15,134 acres) has not been reclaimed or has not been awarded a contract for reclamation.[2] A number of reasons account for the unreclaimed land. These include a time-consuming appeal process, slowness in collecting the bonds, and time lags in getting the reclamation done once the bonds are collected.

Perhaps the major factor is that 14,838 acres, or over 66 percent of the acres involved in bond forfeiture proceedings, have been appealed to the Environmental Hearing Board (EHB) by the bond company and/or the operator.[3] An EHB ruling has been made on only 6,352 acres, and in each case, the Board ruled in favor of the state regulatory authority. The other 8,486 acres remain under appeal and some cases have not been scheduled to be heard even though some of them were appealed as far back as 1984. The average amount of time from bond forfeiture to an EHB ruling has been over 16 months.

State regulatory officials see the high rate of appeals to the EHB as a delaying tactic used by the holder of the bonds to collect several years of additional interest. According to state regulatory officials, some consideration is being given to having the bond money held in escrow pending the EHB ruling; but, they say, surety companies have indicated an unwillingness to bond coal companies if this practice is instituted.

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[2]Of the remaining 7,316 acres, 2,347 acres have been or are being reclaimed; and 4,969 acres are in project design, have been repermitted for remining, or are scheduled to be reclaimed by the mine operator as a result of an agreement with the state regulatory authority.

[3]The EHB is an independent panel consisting of three members to whom surety companies and operators may appeal state regulatory authority actions.

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Another factor contributing to the lengthy reclamation process is the time needed for collecting the bond. Specifically, bonds totalling $10.87 million have not been collected for 10,250 of the 15,134 unreclaimed acres. Most of the 10,250 acres are still under appeal, but the bonds on 1,915 acres have not been collected because either the surety company is involved in bankruptcy or the state regulatory authority has failed to complete collection action despite the authorization to do so. The average amount of time to collect a bond for both appealed and nonappealed cases has been about 8 months.

Getting the reclamation performed after the bonds are collected also adds time to the overall reclamation process. For the acreage on which the state regulatory authority has completed reclamation, it took an average of 41 months to reclaim the land after the bonds were collected. Most of this time can be attributed to the state's efforts to design the reclamation projects and to solicit bids for doing the reclamation.

Overall, it took an average of about 4 years to complete reclamation after forfeiting the bond. However, this figure does not fully reflect the impact of the 16 months required for the EHB appeal because about 94 percent of the reclaimed lands in Pennsylvania to date have not been appealed.

Without timely reclamation, environmental damage results. The sites we visited, as shown in the slides, provide evidence of environmental damage from unreclaimed coal-mined lands. Soil erosion, water pollution, hazards to public health and safety, and reduction in property values are some of the more obvious problems.

In addition, our work in Pennsylvania shows that the state has reclaimed some lower priority sites before reclaiming all of the sites ranked as high-priority.[4] Over 1,800 high-priority acres currently remain unreclaimed while about 400 low-priority acres were reclaimed by the state regulatory authority. A state regulatory authority official acknowledged that this occurred in earlier years because reclamation was controlled more by citizen complaints and political pressure than by environmental damage. The official stated that the current policy is to concentrate on high-priority sites.

In West Virginia, reclamation of bond forfeiture lands is better than in Pennsylvania but still not problem free. Over 72 percent, or 4,849, of the 6,713 acres involved in bond forfeiture proceedings have been reclaimed or have been awarded contracts for reclamation.[5] Several reasons for this success rate can be cited.

In general, reclamation after bond forfeiture in West Virginia is more timely than in Pennsylvania, in part, because of the low rate of appeals filed by mine operators in the state. Unlike Pennsylvania, where bond forfeiture actions on over 66 percent of the acres are appealed, about 4 percent are appealed in West Virginia. Although no firm reason for this

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[4]After bond collection, the state regulatory authority assesses the risk of environmental damage from the sites and ranks them in order of reclamation priority. Sites which present a significant and continuing hazard to human life or a significant threat to health and safety are to receive the highest priority ranking.

[5]Of the remaining 1,864 acres, 1,789 acres have not begun the reclamation process and 75 acres have either been repermitted for remining or the state regulatory authority has reached an agreement with the mine operator to reclaim the land. Interim period bond forfeiture acres account for 5,777 of the 6,713 acres.

difference exists, one explanation offered by West Virginia state regulatory officials is that surety companies in West Virginia are not permitted to appeal the state's bond forfeiture actions. Only mine operators can file an appeal, but they seldom do so. (As noted earlier, in Pennsylvania both the surety company and operator may appeal a forfeiture action). Also, state regulatory authority officials said that they are able to reclaim bond forfeiture sites as they occur. Reclamation generally begins within 8 months after bond collection and, in some cases, before the entire bond has been collected. The average time from bond forfeiture to reclamation completion has averaged less than 2 years.

Although West Virginia's track record for reclaiming bond forfeiture sites is better than Pennsylvania's, West Virginia still has 1,785 unreclaimed acres. Like all unreclaimed areas, the potential for extensive damage to the environment exists. The pictures we took of selected unreclaimed sites in West Virginia show cases of soil erosion, water pollution, hazards to public health and safety, and reduction in property values.

OSMRE involvement in getting the interim program bond forfeiture sites in either state reclaimed has been limited. OSMRE's position is that interim program forfeitures are the states' responsibility. Specifically, they say that bond requirements established under SMCRA apply only to permits issued under the permanent regulatory programs; thus, they believe that OSMRE has no authority to address inadequacies in the interim period bond forfeiture program.

OSMRE officials further stated that their role is to oversee the states' programs for active mining operations and to get the permanent program bond forfeiture sites reclaimed. However, we found that OSMRE, in approving the permanent

programs, did not study the interim program problems and use this experience to prevent similar problems under the permanent program. The same lengthy process for achieving reclamation of interim program bond forfeiture sites is now being applied to permanent program bond forfeiture sites.

OSMRE initiated its first study of Pennsylvania's reclamation process in January 1986--almost 9 years after the act's passage and over 3 years since the state obtained primacy. Results of this study are expected by June 30. OSMRE initiated a similar study in West Virginia in March 1986. Results are also expected by the end of June.

OSMRE officials also told us that with respect to reclaiming bond forfeiture sites, permanent program forfeitures take priority over interim forfeitures. The lack of federal bonding requirements during the interim period is, again, cited as the reason. However, the OSMRE officials acknowledged that this may result in states reclaiming lower priority permanent program acres before reclaiming higher priority interim program lands.

ARE BONDS ADEQUATE?

SMCRA, in addition to requiring mine operators to file performance bonds sufficient to cover the actual cost of reclamation, also permits states to adopt an alternative bonding system. Under such a system, the operator's bond is supplemented through a fund which provides moneys to assist in reclamation of lands affected by coal mining. Both Pennsylvania and West Virginia--along with four other states--have opted for

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alternative bonding systems under their permanent programs.[6] The remaining 18 states with primacy (including Oklahoma) set bond amounts using a predetermined dollar amount per acre. As noted previously, there were no federal bonding requirements during the interim period. Bonds, if any, were required by the existing state laws.

The state bonds covering the interim program bond forfeiture sites have not been adequate to cover the costs of state reclamation in either Pennsylvania or West Virginia. Both states have used moneys from the OSMRE approved permanent program supplemental funds to reclaim some of these sites. However, there are extensive shortfalls in funding for the remaining interim program bond forfeiture acres, particularly in Pennsylvania.

Specifically, the bonds on 521 mine sites covering 22,450 acres have been forfeited in Pennsylvania as of December 31, 1985. Of this acreage, 1,278 acres have either been reclaimed (733 acres) or have been awarded reclamation contracts by the state regulatory authority (545 acres).[7] Another 1,049 acres were reclaimed by the surety companies. All of the reclaimed land is from interim program mined sites.

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[6]Pennsylvania's alternative bonding system consists of a minimum $3,000 per acre bond plus a $50 per acre permit fee. West Virginia's system requires a $1,000 per acre bond supplemented by a tax of one cent per ton of coal produced. Other moneys that go into both states' reclamation funds include penalties, fines and fund interest.

[7]Although Pennsylvania has reclaimed or awarded reclamation contracts for 1,298 acres, 20 of these acres were eliminated from the bond adequacy analysis because they were reclaimed under the Abandoned Mine Land Reclamation (AML) program. The AML program is designed to cover the costs of reclamation for lands abandoned before SMCRA.

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For the acreage either under contract or reclaimed by the regulatory authority, the average reclamation cost per acre has been $6,243 while the average bond amount per acre has been $728. Therefore, the amount of bond forfeited has equaled about 12 percent of the cost of reclamation.

The amount of bond money available to reclaim these acres was approximately $1 million. The reclamation costs, however, totalled about $8 million, requiring over $7 million in supplemental moneys to be used from the state's permanent program reclamation fund.

We found that Pennsylvania's permanent program supplemental reclamation fund is not presently sufficient to reclaim the nearly 15,000 remaining interim program unreclaimed acres. An internal study prepared by the Pennsylvania state regulatory authority in October 1985 showed that, by its own estimate, over $110 million would be needed to reclaim all of its existing forfeited sites. Furthermore, in 1984 the state estimated that at the current expenditure rate of $2 million/year, it would take over 45 years to clean up the interim program problem. As of January 16, 1986, the fund had a balance of $12.1 million. Approximately $1.2 million a year in revenues have been generated by the supplemental reclamation permit fee.

In addition, the adequacy of the Pennsylvania permanent program bonding system to reclaim bond forfeiture sites permitted and subsequently abandoned under the state's permanent program is unknown because OSMRE has not developed any criteria or a methodology for assessing adequacy of an "alternative" bonding system. None of the permanent program bond forfeiture acres in the state have been reclaimed so the ratio of the bond amount to the cost of reclamation on these lands is not known.

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West Virginia, in comparison, has forfeited the bonds on 269 mine sites involving 6,713 acres since the passage of SMCRA. Our analyses show that of the 6,713 acres, 2,931 have either been awarded contracts (333 acres) or reclaimed by the state regulatory authority (2,598 acres). Another 1,918 were reclaimed by the surety companies. With the exception of 411 acres, all of the reclaimed land is from interim program mined lands.

Compared with Pennsylvania, where the amount of bond forfeited under the interim program has equaled about 12 percent of the cost of reclamation, the percentage in West Virginia has equaled 45 percent--46 percent on interim program reclaimed sites and 40 percent on permanent program sites. The average reclamation cost per acre for the reclaimed/under contract acres has been $2,483 while the average bond amount has been $1,124. Like Pennsylvania, a substantial amount of the money needed to reclaim these sites--$3.9 million--came from the permanent program supplemental fund.

In November 1985, West Virginia estimated that $8.9 million will be needed to reclaim the interim program lands that remain unreclaimed. As of December 1985, the state reclamation fund had a balance of $5.7 million. The average annual income generated by the supplemental coal tax over the past 3 years (1983-1985) was $900,000. On the basis of their analysis of the fund, state regulatory authority officials believe that the fund will generate enough money to reclaim all interim program mined lands, but they could not tell us how many years this would take.

As in Pennsylvania, what is not known is whether the permanent program bonding system is adequate to reclaim all future permanent program bond forfeiture sites. A preliminary

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actuarial study of this fund was made by an independent actuary in 1982 at the request of the state regulatory authority. This assessment concluded that the fund was sufficient to cover expected costs for the next year, but it did not address the fund sufficiency beyond that. Also, according to this report, much of the data needed to make a conclusive study simply did not exist. For example, the net assets in the reclamation fund were indeterminate at the time. A final actuarial study of the fund was not made.

OSMRE's involvement in assessing the adequacy of the alternative bonding systems in Pennsylvania and West Virginia has been limited. Bonding system adequacy has not been addressed by OSMRE in any of its annual oversight reviews of either state's regulatory program although adequacy of the states' supplemental funds to cover the reclamation cost of current permanent program bond forfeiture sites has been included as an objective for the 1986 review. The 1986 review is ongoing and results are not expected until later this year.

In West Virginia, the Morgantown OSMRE Area Office conducted a special forfeiture study during 1985. This study showed that for 18 reclaimed sites, only 2 had adequate bonds. However, the study did not include an analysis of the ability of West Virginia's supplemental fund to cover costs of reclamation above the bond amount. Pennsylvania OSMRE officials have not conducted any bond forfeiture special studies.

The OSMRE Assistant Director for Operations told us that alternative bonding systems, if properly designed, are an excellent idea. He acknowledged, however, that proper design has not been agreed upon within OSMRE nor has a methodology been developed for assessing fund adequacy. Consequently, although OSMRE approved the alternative bonding systems in both

Pennsylvania and West Virginia these systems have never been "modeled" to assure fund adequacy for reclamation of future potential bond forfeiture lands.

ARE BOND RELEASES APPROPRIATE?

SMCRA provides for the release of a bond by the regulatory authority if the authority is satisfied that the reclamation covered by the bond has been accomplished. Our review of state bond release files showed that both states generally complied with the requirements for releasing bonds. However, at three bond release sites that we visited, the OSMRE inspector(s) accompanying us identified reclamation deficiencies which, they believed, raised questions about the appropriateness of the bond release.

Specifically, we reviewed a statistically valid sample of 222 bond releases made in 1985 at two district offices in Pennsylvania--Greensburg and Pottsville. (Results of this review are projectable to the two district offices.) We checked to see if the major bond release procedures were followed, including (1) if the site was inspected by the state regulatory authority before the release was approved, (2) if proper public notice was given, and (3) if citizen/landowner complaints were addressed. We found documentation in the state records which showed that the regulatory authority had generally followed the required bond release procedures.

However, during our on-site visits to eight of the 1985 bond release sites included in our sample, the accompanying OSMRE inspector identified two sites with reclamation deficiencies. On the first site, the deficiencies noted included inadequate sediment ponds and erosion problems, and the fact that it had not been restored to its approximate original

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contour as required by SMCRA. Reclamation on the second site, according to the OSMRE inspector, was generally good. However, the sediment pond had been removed but not reseeded--a requirement for a revegetation bond release. The OSMRE inspectors stated that the remaining six sites were adequately reclaimed. Pennsylvania officials told us that these sites were probably in compliance at the time of release--approximately 3 months before our visit. Because of the lapse in time, this difference of opinion could not be resolved.

In West Virginia, we reviewed a statistically valid sample of 74 bond releases made during 1984 or 1985 at one district office--Philippi. (Results of this review are projectable to the district office.) Our review of the bond release files for these cases showed that the state generally complied with the requirements for releasing bonds. However, during our on-site visits to seven of the 1984 or 1985 bond release sites included in our sample, the OSMRE inspector(s) accompanying us identified one site where he questioned the appropriateness of the bond release. Poor sediment controls, acid water run-off and substantial erosion were the reclamation deficiencies identified at the time of the visit. As in Pennsylvania, West Virginia officials told us that the site was probably in compliance at the time of release which was also 3 months before our visit.

The OSMRE field offices in both states have conducted studies of bond releases. Few problems were cited in Pennsylvania, but numerous violations of reclamation performance standards were noted in West Virginia. In Pennsylvania, OSMRE conducted a special 1985 study of 75 bond releases. The study concluded that the state is assuring that the applicable performance standards are being met before approving releases. The West Virginia study, conducted during 1984, found violations of program standards at approximately 31 percent of the 68 sites

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given bond release by the state regulatory authority. These violations ranged from inadequate signs and markers to backfilling, regrading, and revegetation requirements.

SUMMARY

I would like to now recap our tentative observations on the problems associated with the bonding and reclamation processes in Pennsylvania and West Virginia

--Both Pennsylvania and West Virginia have unreclaimed land which needs to be dealt with. In Pennsylvania, it amounts to over 15,000 acres, and in West Virginia to about 2,000 acres. These lands are primarily from the interim period.

--It has taken a significant amount of time for reclaiming bond forfeiture land--4 years in Pennsylvania and 2 years in West Virginia.

--The bonds and funds have not been adequate to cover the costs for completing reclamation of interim program lands. In Pennsylvania, for example, the fund presently stands at about $12 million while state officials project that about $110 million and more than 45 years could be needed to complete reclamation of these lands.

--OSMRE has not done an analysis or applied criteria to assure that the permanent program alternative bonding systems will be adequate. Consequently, the systems are continuing to operate without clear evidence that the methods to replenish the supplemental funds are adequate to assure reclamation of all permanent program bond forfeiture lands.

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--OSMRE's position to reclaim permanent program bond forfeiture lands first may result in less hazardous sites being reclaimed before more hazardous interim program unreclaimed lands.

As evidenced by the slides and the statistics presented today, adverse effects of surface coal mining continue to exist. Unreclaimed land from the interim period is a serious problem. Our work to date suggests that OSMRE, as the lead federal agency in the area, is the logical focal point to develop an approach for resolving this problem.

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This concludes my statement Mr. Chairman. We will be glad to answer any questions.

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FINDINGS FROM OUR REVIEW OF THE BONDING SYSTEM FOR RECLAMATION OF STRIP-MINED LAND IN OKLAHOMA

In our August 8, 1985, report--Surface Coal Mining Operations in Two Oklahoma Counties Raise Questions About Prime Farmland Reclamation and Bond Adequacy (GAO/RCED-85-147)--we reported on the same bonding issues that we are currently addressing in our on-going review of the Pennsylvania and West Virginia bonding systems. These issues include reclamation procedures after bond forfeiture, the adequacy of the funds provided by the bonding system, and the appropriateness of bond releases.

We reported that in the two counties included in our review--Okmulgee and Muskogee--19 sites (1,470 acres) had been abandoned since passage of the Surface Mining Control and Reclamation Act of 1977. Since abandonment, no reclamation had occurred on 12 of these sites. The major reason for lack of reclamation was the inability of the state regulatory authority to collect the bond money. For example, four of the sites were bonded by letters of credit with expiration dates. In each of these cases, the state regulatory authority allowed the letters of credit--totalling $425,300--to expire.

With respect to the adequacy of bond amounts, we reported that of the 19 post-SMCRA abandoned sites in Okmulgee and Muskogee counties, 7 had been reclaimed by the surety company. Because a surety company does not usually opt to do the reclamation unless it believes that the bond is adequate, the bond amount, in our opinion, was probably adequate in these instances. The adequacy of the bond money for the remaining 12 abandoned sites was not known since the state regulatory authority has not been successful in collecting the funds. However, even though the bond money had not been collected, OSMRE officials questioned the adequacy of the $1000-per-acre bond on these and other interim sites bonded at the same level. Bond adequacy for permanent program permitted areas could not be

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assessed at that time because no forfeitures had occurred on any of these areas.

We also reported that coal operators were concerned with bonding requirements because they found it difficult to obtain bonds--bonding companies generally require a mine operator to have collateral of three to five times a bond's face value. Mining and bonding company officials stated that this situation had resulted in a number of mine operators going bankrupt or leaving the industry. Furthermore, bonding company officials in the state told us that they were reluctant to bond operators in this environment. We did not, however, identify any examples of improper or inappropriate bond release based on our review of the citizens complaint file for the two counties included in our review.

Finally, we reported that both OSMRE and state regulatory authority officials believed that the key to adequate reclamation is inspection and enforcement--unless inspectors cite reclamation plan violations as they occur and order operators to cease operations immediately if the violations are not corrected, future reclamation problems could occur.

Ms. CANNON. What I am going to do is to show you about 20 slides. They are a combination of Pennsylvania and West Virigina bond forfeiture sites that we visited. To a large extent, they are self-explanatory, but I will point out certain features for you since some of you may not be familiar with coal mining and the environmental damage resulting from abandoned mine sites.

The first slides that you will see are in Pennsylvania. I will tell you what county each bond forfeiture site is located in, the acreage that it covers, and some of the environmental problems that were pointed out by the OSM inspector accompanying us to these sites.

[Slide A follows:]

Indy-Penn - Interim Forfeiture County: Fayette Acreage: 14.9 Abandoned: 1-28-80 Forfeiture Date: 1-30-81 Appeal Date: Not appealed Bond Collected: $14,900 on 3-25-81 Damage and Cost Estimate Made: 10-3-83 Reclamation Priority: 2 (High priority) Reclamation Stage: No reclamation; currently being designed	SLIDE A Inspector Comments: --Should be a high priority --Site Assessment: •open pit near houses; pit has water accumulation •access to site is unrestricted •sediment has washed into pit •extensive erosion gullies •no erosion or sediment controls •no remaining topsoil

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Ms. CANNON. This slide shows the pit area and soil erosion from the pit. There is also surface water runoff adjacent to the pit area and exposed coal in the foreground of the mine site. The OSM inspector told us that this should be a high priority site, mainly because of the close proximity of houses. (Left part of the slide.) There are other houses near the mine site which we did not capture in this particular slide.

[Slide B follows:]

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Joseph Weaver - Interim Forfeiture County: Westmoreland Acreage: 30 disturbed Abandoned: Date unknown Forfeiture Date: 10-28-80 Appeal Date: Not appealed Bond Collected: $17,284 on 3-27-81 Damage and Cost Estimate Made: 5-4-83 Reclamation Priority: 1 (highest priority) Reclamation Stage: No reclamation; state regulatory authority plans to sue company to get site reclaimed	SLIDE B Inspector Comments: --Even if reclaimed, the land would be barren --Area looks like a moonscape --Site Assessment: •exposed acid bearing material •inadequate erosion and sedimentation controls •several open pits filled with water •limited topsoil for reclamation •unrestricted access to site

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Mr. WISE. Is that an interim program?

Ms. CANNON. Excuse me, I did not understand the question. It is an interim forfeiture site.

Mr. WISE. So, did the OSM law apply when that permit was originally granted? I don't mean about bonding, I mean in general. I don't understand how they got so close to that house.

Ms. CANNON. It is an interim permit.

Mr. WISE. But did the OSM law apply?

Ms. CANNON. It was never re-permitted to meet permanent program bonding requirements or reclamation standards.

Mr. GRYSZKOWIEC. But OSM did have inspection and enforcement authority over the site.

Ms. CANNON. Again, this is one of the interim sites that OSM views as the State's responsibility.

Mr. SYNAR. We need you to say for the record which counties these are in.

Ms. CANNON. Fine. This site is located in Fayette County and covers about 15 acres. The next site is located in Westmoreland County, and covers about 30 acres.

[Slide C follows:]

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SLIDE C

Joseph Weaver - Interim Forfeiture

See above site profile

This picture shows the water filled pit while the above picture shows the exposed acid bearing material

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Ms. CANNON. What can be seen here is acid-bearing material. There are no erosion controls; consequently, the exposed material, is causing environmental damage to adjacent properties.

Again, the inspector's comment was that this is an extremely dangerous site based on the close proximity of houses.

Another point that we want to make in all of these slides is that in no case did we find any fences or barriers to prevent public access to the sites. Anyone can walk onto these sites at any time.

[Slide D follows:]

Griqas and Ryan - Interim Forfeiture

County: Fayette

Acreage: 30.79

Abandoned: 4-79

Forfeiture Date: 9-9-83

Appeal Date: Not appealed

Bond Collected: $17,704 on 4-16-84

Damage and Cost Estimate Made: 4-12-85

Reclamation Priority: Mixed high and low (2,4)

Reclamation Stage: No reclamation; part of area is in design

SLIDE D

Inspector Comments:

--Operator mined off permit area

--Looks like a moonscape

--Site Assessment:
- *uncontrolled drainage
- *siltation of surrounding woodlands
- *inadequate sediment controls
- *open pit with water
- *soil erosion

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Ms. CANNON. The next slide is the same site as the previous slide, but shows a different perspective. An open pit area, erosion, and surface water runoff into the pit area are some of the environmental problems that can be seen.

The water in most unreclaimed pit areas, such as this one, is very acidic.

[Slide E follows:]

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A&T Associates - Interim Forfeiture	SLIDE 5
County: Schuylkill	Inspector Comments:
Acreage: 45 permitted; 35 disturbed	--Site is a mixture of Title IV and Title V lands
Abandoned: 9-11-84	
Forfeiture Date: 3-28-85	--State now owns the land; some stop-gap reclamation done after town citizens complained
Appeal Date: Not appealed	
Bond Collected: $25,000 on 10-25-85	
Damage and Cost Estimate Made: Not yet conducted	--Site Assessment: •soil erosion •reduced property value •little topsoil remaining •sediment control ponds are good •public access not blocked
Reclamation Priority: None assigned	
Reclamation Stage: No reclamation because regulatory authority said bond was never collected. GAO found that the bond was collected on 10-25-85	

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Ms. CANNON. The next slide also shows an interim period forfeiture site. The site is a mixture of title 4 and title 5 bond forfeiture land.

Mr. SYNAR. Where is this site?

Ms. CANNON. It is located in Schuylkill County.

Mr. SYNAR. In Pennsylvania.

Ms. CANNON. Yes. I will tell you when I switch to West Virginia. So far, all of the sites that you have seen are in Pennsylvania. This site covers 3,500 acres.

This mine site is on top of a hill, so that every time that it rains, acid-bearing material is washed into the village. Following numerous citizens' complaints, the State did some stopgap reclamation, but no additional efforts have been taken to get this site reclaimed.

What you also see here is something that is encountered on a number of abandoned sites—abandoned equipment. Abandoned equipment is a problem that the State has to contend with in trying to get sites reclaimed.

[Slide F follows:]

R.B.F. - Interim Forfeiture

County: Northumberland

Acreage: 10 permitted

Abandoned: 1-21-80

Forfeiture Date: 5-5-80

Appeal Date: Not appealed

Bond Collected: $7,412 on 11-7-80

Damage and Cost Estimate Date: 11-18-83

Reclamation Priority: 2 (High priority)

Reclamation Stage: In design; no cost available; no reclamation

SLIDE F

Inspector Comments:

--This is the second time that the area has been abandoned

--Site Assessment:
- extensive soil erosion
- inadequate sediment controls
- reduced property value
- pit filled with surface water
- public access not blocked

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Ms. CANNON. This is another interim forfeiture site. It is located in North Cumberland County, and covers about 10 acres. It looks similar to other bond forfeiture sites.

Again, here you have an open pit area. There is erosion, the pit is filled with water, and access to the site is unrestricted.

[Slide G follows:]

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West Freedom 7 Primacy Forfeiture County: Armstrong Acreage: 25.5 permitted Abandoned: 11-7-84 (last actively mined) Forfeiture Date: 10-7-85 Appeal Date: 11-8-85 Bond Collected: None Damage and Cost Estimate Made: Not yet conducted Reclamation Priority: None assigned Reclamation Stage: No reclamation due to pending appeal hearing	SLIDE G Inspector Comments: --This should be a priority site; extensive environmental problems exist --Site Assessment: •80'-90' exposed highwalls •extensive soil erosion •toxic water run-off •public access not blocked *Total number of West Freedom mined acres involved in bond forfeiture totals 576.

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Ms. CANNON. This is a primacy forfeiture site located in Armstrong County. This particular site covers about 25 acres.

I want to point out that the operator on this particular site has abandoned, in total, about 575 acres in the State. The abandoned acres are a combination of interim and primacy forfeiture sites.

So what you are looking at here is only one parcel of land that the operator has left the State to reclaim. The expansiveness of the environmental damage on this site can be seen by comparing the size of the site to the inspector in the picture. We tried to get people in these pictures to give you some perspective of the size of the reclamation problem.

[Slide H follows:]

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SLIDE H

West Freedom - Primacy Forfeiture

See above site profile

This picture, along with the other two pictures on this page, depict the extensive environmental degradation existing at the West Freedom bond forfeiture site profiled here.

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Ms. CANNON. The next slide shows a different view of the same site. This is one of the open pit areas [pointing]. Here again is the inspector [pointing]. Compare his size to the size of the whole operation. Again, you have abandoned equipment, exposed material, and no sediment or erosion controls. And, like a lot of these sites the inspector made the comment that even if the site was reclaimed, there is so little top soil left that the land would be barren.

Mr. WISE. How large an area is that?

Ms. CANNON. This is a 25-acre primacy forfeiture site. Three slides have been included in order to give you a better perspective of how large the site is.

[Slide I follows:]

SLIDE I

West Freedom - Primacy Porfeiture

See above site profile

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Ms. CANNON. Again, this is another shot of the same site showing exposed coal, abandoned equipment, water runoff, and the lack of sediment ponds and other erosion controls.

[Slide J follows:]

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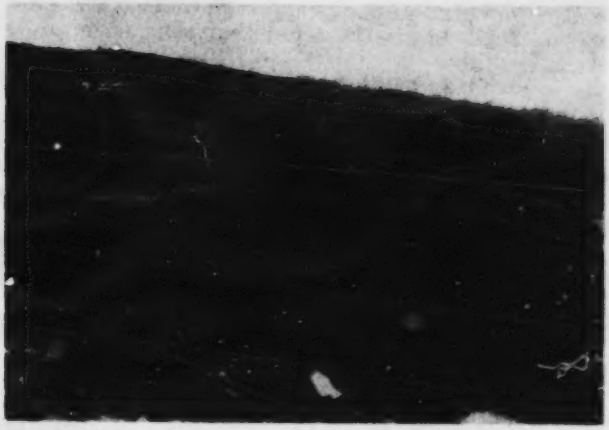

Clarksburg Coal - Primacy Forfeiture

County: Fayette

Acreage: 37.8 permitted

Abandoned: Date unknown

Forfeiture Date: 6-25-85

Appeal Date: 7-10-85

Bond Collected: None

Damage and Cost Estimate Made: Not yet conducted

Reclamation Priority: None assigned

Reclamation Stage: No reclamation due to pending appeal hearing

SLIDE J

Inspector Comments:

--This should be a priority site because of the close proximity of houses and the instability of the soil

--Site Assessment:
- 2 open pits filled with approx. 20 feet of water each
- little remaining topsoil
- drainage ditches blocked with spoil
- soil erosion
- public access not blocked
- abandoned equipment

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Ms. CANNON. This is also a primacy forfeiture site in Pennsylvania. It is located in Fayette County and covers about 38 acres. As you can see, you begin to get the sense that bond forfeiture sites are all pretty much alike.

This is the open pit area filled with surface water runoff. The green water is not an indication that there is any sort of life form in the pond. As an aside, when we visited mine sites in Oklahoma, one farmer—on an area very similar to this—had posted a sign: Fishing, $5.

He said he had some takers, but no one had ever caught a fish.

[Slide K follows:]

SLIDE K

Clarksburg Coal - Primacy Forfeiture

See above site profile

This picture shows exposed toxic material while the above picture shows one of the two water filled open pits

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Ms. CANNON. The next slide is the same primacy forfeiture site. It shows a different angle. Here you can see the public access road and the fact that some effort was made to install limited sediment controls on the site [pointing]. What is encouraging is that about 2 weeks ago the State repermitted this site for remining.

[Slide L follows:]

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S.R.J. Enterprises, Inc. - Interim Forfeiture

County: Marion

Acreage: 18

Abandoned: Date not documented

Forfeiture Date: 6-3-85

Appeal Date: 8-7-85

Bond Collected: None

Reclamation Priority: Not applicable

Reclamation Stage: No reclamation; still under appeal

SLIDE L

Inspector Comments:

--Operator virtually failed to follow any of the SMCRA performance standards

--Site Assessment:
- *acid mine drainage which is polluting the near-by stream
- *private residence near the site
- *unrestricted access to the site
- *inadequate sediment controls
- *soil erosion
- *reduce property value
- *40' exposed highwall

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Ms. CANNON. Now we are going to switch to West Virginia's bond forfeiture sites.

You can see that the problems in West Virginia are somewhat similar to those in Pennsylvania.

Mr. SYNAR. What county is this?

Ms. CANNON. Marion County. And it covers 18 acres. Here you can see the exposed high wall [pointing]. The OSM inspector said that virtually no topsoil remains on the site; and, if reclaimed, the site would probably be barren.

Mr. SYNAR. Interim site—I mean interim bond?

Ms. CANNON. Yes.

Mr. SYNAR. How many acres?

Ms. CANNON. Eighteen.

[Slide M follows:]

SLIDE M

S.R.J. Enterprises, Inc. - Interim Forfeiture

See above site profile

This picture documents the acid mine drainage which is resulting from the exposed coal spoil.

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Ms. CANNON. The next slide is another picture of the same site. This is obviously not the color that water should be [pointing]. This is frequently what happens when acid-bearing material is exposed to the elements. What is not shown in this particular picture is that the acid water runs directly into a nearby stream.

[Slide N follows:]

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SLIDE N

S.R.J. Enterprises, Inc. - Interim Forfeiture

See above site profile

This picture documents the hazardous nature of this site because of its close proximity to a private residence.

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Ms. CANNON. The next slide really brings home the point on this particular site. This unreclaimed mine site is in someone's backyard. The close proximity of the house to the site was of great concern to the inspector. As you can see, no fences or barriers prevent anyone from coming onto this site [pointing].

Mr. WISE. Go back. Did you take any measurements from that house to where the mining is occurring?

Ms. CANNON. We did not.

Mr. WISE. I mean, is that a football field, 300 feet?

Ms. CANNON. I would say it is closer than that. The mine site goes down to here [pointing].

Mr. WISE. Do you happen to know when that was permitted?

Ms. CANNON. I have it in my records. I don't have it with me.

Mr. WISE. But it was since 1977?

Ms. CANNON. It is an interim program site so, yes, it was 1977.

All of the sites which have been shown deal with the subject today—title V lands. We are not looking at anything under title IV.

Mr. GRYSZKOWIEC. All of these were permitted after 1977 and there were at least interim environmental standards in place. These standards are not as rigid as the ones under the permanent program. Even so, OSM was still responsible for inspecting and enforcing the interim program reclamation standards.

[Slide O follows:]

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Gator Mining - Primacy Forfeiture County: Barbour Acreage: 56 Abandoned: Date not documented Forfeiture Date: 6-13-85 Appeal Date: Not appealed Bond Collected: $56,000 on 7-29-85 Reclamation Priority: Not applicable Reclamation Stage: No reclamation; to be contracted. State estimate $56,000.	SLIDE 0 Inspector Comments: --Site Assessment: • little remaining topsoil • extensive soil erosion • plugged drainage control culvert • slipped backfilling • unrestricted access to the site --No way $56,000 will be adequate to complete reclamation

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Ms. CANNON. This slide shows a primacy forfeiture site located in Barbour County, WV. The acreage permitted here is 52 acres.

Obviously, we couldn't capture all of the acreage here. Once again, you have the exposed pit area filled with surface water runoff, and exposed acid-bearing material [pointing]. The inspector also pointed out that there are no sediment or erosion controls on the site.

The next slide——

Mr. WISE. Excuse me. Where is that?

Ms. CANNON. That is in Barbour County.

[Slide P follows:]

SLIDE P

Gator Mining - Primacy Forfeiture

See above site profile

Along with the above picture, this picture documents the environmental degradation existing at the Gator Mining bond forfeiture site.

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Ms. CANNON. This slide is another angle of the same site. As you can see there is a great deal of coal residue that is sitting in a lot of water. Acid water is the result of this situation.

[Slide Q follows:]

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Williford Excavating - Interim Forfeiture

County: Preston

Acreage: 20

Abandoned: Date not documented

Forfeiture Date: 2-8-85

Appeal Date: Not appealed

Bond Collected: $39,811 on 4-3-85

Reclamation Priority: Not applicable

Reclamation Stage: No reclamation; to be contracted. State estimate $171,000.

SLIDE Q

Inspector Comments:

--Site Assessment:
- *huge exposed pit with high highwall
- *close proximity to house results in dangerous situation
- *unrestricted access to site
- *soil erosion

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Ms. CANNON. This site is an interim forfeiture site. It is located in Preston County, WV. And, the acreage that was permitted here is 20.

This is one of the largest pit areas that we saw. To put it in perspective, these are two of our auditors here [pointing]. This whole area is filled with water [pointing]; and what we found at this site, like a number of other sites that we went to, is that they are used as garbage dumps. Obviously this site has not been blocked from public access.

What you don't see in this picture, however, is a house that is located here [pointing].

Mr. WISE. I am trying to get a sense of scale.

Ms. CANNON. This is where the water begins.

Mr. WISE. OK. Now, come down. I see some red. What is that?

Ms. CANNON. That is a trash can. When I took the picture, I was standing here [pointing].

Mr. WISE. Oh, I see. For comparison, right? I see a box over here. Can you see the auditors all the way up on the top?

Ms. CANNON. It is important to note that this site is potentially very dangerous; the soil surrounding the pit area is not stable, making it very easy to slip and fall into the pit. Children can easily access this site.

[Slide R follows:]

Keister Coal - Interim Forfeiture

County: Barbour

Acreage: 110 (2 permits)

Abandoned: Date not documented

Forfeiture Date: 9-4-80 and 1-14-81

Appeal Date: Not appealed

Bond Collected: $27,000 on 9-28-83
$86,530 on 6-28-83

Reclamation Priority: Not applicable

Reclamation Stage: No reclamation; to be contracted. State estimate $150,000.

SLIDE R

Inspector Comments:

--Site Assessment:
- poor water quality
- extensive soil erosion
- little remaining topsoil
- 40' exposed highwall
- unrestricted access to the site
- reduced property value

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Ms. CANNON. This is an interim forfeiture site, also located in Barbour County, WV. The acreage that was permitted was 110.

Obviously we couldn't get all the acreage in one picture. What you have here was an effort made by the coal company to build a sediment control pond. [Pointing.] As the OSM inspector pointed out, it is just a matter of time before the pond will be totally filled with silt. What will happen then is that the sediment will run directly into the stream [pointing].

[Slide S follows:]

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SLIDE 5

Keister Coal - Interim Forfeiture

See above site profile

This picture documents the exposed highwall that is not restricted from public access.

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Ms. CANNON. This is another picture of that same site which shows the exposed high walls. To put it in perspective, compare the size of the trees that have fallen, and the height of one of our auditors to the height of the high wall. The OSM inspector pointed out that hunters could easily walk off the side of the high wall—the site was not marked with warning signs nor was it restricted.

[Slide T follows:]

BEST COPY AVAILABLE

Southern Eagle - Primacy Forfeiture

County: Randolph

Acreage: 10.9

Abandoned: Date not documented

Forfeiture Date: 2-6-85

Appeal Date: Not appealed

Bond Collected: $10,963 on 3-8-85

Reclamation Priority: Not applicable

Reclamation Stage: No reclamation; to be contracted. State estimate $50,000.

SLIDE T

Inspector Comments:

--Site Assessment:
- exposed highwalls
- exposed toxic material
- unsealed mine openings
- unrestricted access to the site
- haulroad blocked by debris
- no toosoil remaining
- acid water run-off into nearby stream
- no sediment controls

BEST COPY AVAILABLE

Ms. CANNON. This is a primacy forfeiture site, and it is located in Randolph County, WV. The acreage permitted here is 11. The difference in this site from the others that you have seen is that it demonstrates the surface effects of underground mining. This is an underground opening here [pointing].

This mine opening has not been sealed. Not only has this opening not been sealed, but there is another opening on the other side, which also has not been sealed.

Mr. SYNAR. So somebody could go in.

Ms. CANNON. Anybody could go in.

Mr. WISE. The operator walked off on it?

Ms. CANNON. Yes.

Mr. SYNAR. Where is that site located?

Ms. CANNON. In West Virginia. And, just like the other sites, no erosion controls or sediment control ponds exist. Rain water runs directly down the hill.

[Slide U follows:]

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Salem Fuel Company - Bond Release

County: Westmoreland

Stage of Release: Phase 1

Date of Release: 8-21-85

Acreage: 24.1

Amount Released: $36,780

Amount Remaining: $24,520

GAO Visit: November 1985

SLIDE U

Inspector Comments:

--Site Assessment:
- release should not have been made
- not returned to AOC
- virtually no topsoil
- substantial erosion problems
- inadequate sediment ponds
- inadequate drainage pipe causing water run-off to go over the back of the site
- unstable surface

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Ms. CANNON. The last two slides that I am going to show you are bond release sites. To illustrate, if an operator mines a site, backfills it, and regrades it, he may apply for a 60 percent bond release. If it is found that there has been adequate reclamation, he is allowed to get 60 percent of his bond released. Here you can see the sediment control pond [pointing]. This is your main pipe [pointing] which has been pushed up by water pressure and is no longer working.

The point here is that this site was granted a bond release which raised a question in the inspector's mind as to the appropriateness of the release. Adequate water controls were supposed to be in place.

Mr. SYNAR. What State is that located in?

Ms. CANNON. This is in Pennsylvania, in Westmoreland County.

Mr. SYNAR. You say this is what it normally looks like in that area? I mean, this kind of pipe?

Ms. CANNON. We did not see any others. The inspector only found problems on two of the sites, two of the eight that we went to.

But he made the comment that a lot of the operators were using this type of pipe, and if used, the same thing invariably happens.

There was some concern on his part that perhaps the site should not have been granted a Phase I release. The question, however, that cannot be answered is whether or not this problem existed at the time the release was made?

[Slide V follows:]

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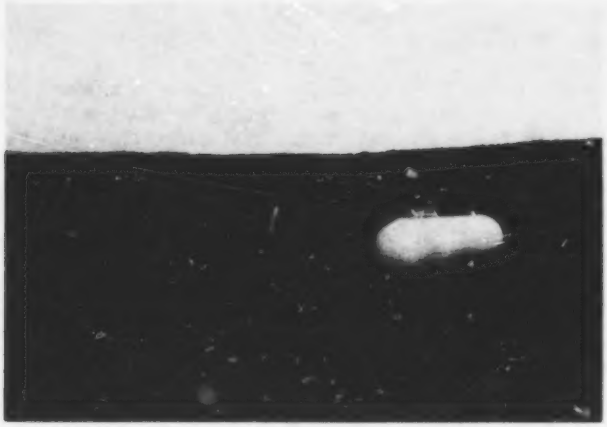

Patriot Mining Company - Bond Release

County: Preston

Stage of Release: Grade Release

Date of Release: 6-26-84

Acreage: 38

Amount Released: $22,800

Amount Remaining: $15,200

GAO Visit: November 1985

SLIDE V

Inspector Comments:

--Site Assessment:
- good ground cover with diversion ditches
- some on-site erosion
- acid seepage resulting in acidic pond water
- perpetual water problem likely
- 80 head of cattle present which should not be

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Ms. CANNON. The last slide is also a bond release site. It is located in West Virginia, in Preston County.

The reclamation on this site looks pretty good, according to the inspector. But the problem here is acid runoff from the site. The water in the sediment control pond is very acidic. The operator is currently treating the water in the pond, but this is a very expensive proposition. The inspector said that water treament could run from $10,000 to $20,000 a month. The point here is that as long as the operator continues to treat the water it is fine, but at some point it is going to become too expensive for him to continue treatment. The inspector stated that the operator would probably walk off the site and forfeit the rest of the bond. However, he questioned whether a 60-percent release should be granted in cases where there is a perpetual water problem. The inspector said that the operator would never come in and try to get the rest of the bond released. If, for example, there was about a $15,000 bond remaining, and the operator chooses to forfeit bond, you have about 1 to 2 months worth of money that could be used to treat this water. Then the State would inherit the problem.

For emphasis, what we are saying here is that there is a perpetual water problem. It is not going away. Two of the sites that we visited probably have perpetual water problems, according to the OSM inspectors.

Mr. SYNAR. Thank you very much.

Michael, let me start with you. You all reported last August that in my State of Oklahoma, no reclamation had occurred on 12 of the 19 sites in the two counties you examined.

One site had been abandoned for 6 years, one for 5 years, two for 4 years, one for 3 years, and six for 2 years. During the 10 months which have passed since the report was published, how many additional sites have been reclaimed of that group that I just went through?

Mr. GRYSZKOWIEC. We have been informed that two additional sites have been reclaimed, and one has been repermitted.

Mr. SYNAR. What is the probability the others will be reclaimed?

Mr. GRYSZKOWIEC. I think I will have Doris answer this in more detail, but we think that the probability is low. We do not believe that the State regulatory authority will be able to collect the bond. Some of these bonds—I think four of them, had letters of credit amounting to about $425,000 which were allowed to expire. Therefore, the money is not going to be available to reclaim the sites.

So, again, we think the probability is very low.

Mr. SYNAR. So, you are saying the remaining sites will probably remain as they are.

Mr. GRYSZKOWIEC. That is right.

Ms. CANNON. A lot of the bonds have been with the State attorney general's office for 3 or 4 years, and they haven't been collected yet.

I spoke to the director of the State regulatory authority. She indicated that the problem in Oklahoma was the "paper" on which some of those bonds were written. In essence, the bond paper was bad. Once the bonds are written off on a legal technicality, you are not going to get any money.

Mr. SYNAR. You also reported that the 1983 and 1984 oversight reviews of the State by OSM criticized the adequacy of Oklahoma's bonds. What criteria was used by OSM to evaluate the adequacy of the bonds in these cases?

Ms. CANNON. If you read the OSM oversight reports, the comment that was made by OSM was that the State was accepting what the operator submitted as the estimated bond amount with no independent verification or mathematic calculations by the State regulatory authority.

So, I asked how OSM would go about assessing bond adequacy? In addition to that, I asked what the appropriate amount should be?

The person that I asked these questions to was an employee of the Western Technical Center who had been detailed to Oklahoma to work with the State as part of the takeover. He laughed, and replied: Well, it is whatever the Western Technical Center feels is adequate.

And I said: Well, what is that?

He said: There isn't any written or formal criteria. I just know that what they have is too low. In summary, he could not supply me with any formal criteria that was used.

Mr. SYNAR. Weren't they really using that, "worst case method" that Western Technical——

Ms. CANNON. Yes, they were.

Mr. SYNAR. Is that method still being used in Oklahoma?

Ms. CANNON. Yes, it is.

Mr. SYNAR. How many other States are using that system?

Ms. CANNON. I do not know the answer to that. OSM officials couldn't tell me the answer to that question either, except that they were collecting the information as part of this year's oversight.

Mr. SYNAR. I understand you talked to OSM officials about the Oklahoma report. What did you learn with response to the report?

Ms. CANNON. As you know, the Oklahoma report dealt with the issue of prime farm land. What I was told is that OSM met with the State regulatory authority with respect to the prime farm land issue. However, they did not hold a meeting with coal operators or bonding company officials to discuss bond availability or bond adequacy.

Mr. SYNAR. Now, OSM has approved alternative bonding systems in a handful of States, which include the two that we looked at this morning, Pennsylvania and West Virginia.

At the time that OSM approved these programs, were actuarial studies performed?

Mr. GRYSZKOWIEC. No actuarial studies were performed except for a partial one in West Virginia. What OSM did was grant a conditional approval in West Virginia, and then required them to go out and obtain a study to determine the adequacy of the system.

When the study came back, the independent group that was contracted to do the work said: The fund appears to be adequate for the next year, but because a lot of the data needed to make a long term assessment was not available, the adequacy could not be addressed beyond one year.

Mr. SYNAR. Did they lift the condition?

Mr. GRYSZKOWIEC. Yes, they lifted the condition.

Mr. SYNAR. What did you find out about the other criteria used to evaluate the alternative systems?

Mr. GRYSZKOWIEC. At the current time, there is no formal criteria or methodology for evaluating these other systems.

Mr. SYNAR. Could they provide you with the criteria which is currently being used for alternative bonding?

Mr. GRYSZKOWIEC. Well, there isn't any.

Mr. SYNAR. So they couldn't provide you——

Mr. GRYSZKOWIEC. That is correct, they couldn't provide us with any criteria.

Mr. SYNAR. In your prepared statement, you said that some see the high number of appeals in Pennsylvania as a delaying tactic used by the bondholder to collect several years of additional interest.

A possible solution is to put the money in escrow, obviously. Is that done? What would happen if it was done? Would the State get the interest if it won, and the bondholder the interest if it won?

Mr. GRYSZKOWIEC. First of all, it has not been done yet. The State regulatory officials told us that they put it on the backburner because sureties were complaining that, if it was done, they may not want to continue to bond.

Mr. SYNAR. That sounds fair to you doesn't it?

Mr. GRYSZKOWIEC. That they should hold it in escrow?

Mr. SYNAR. Right.

Mr. GRYSZKOWIEC. It sounds fair to me. But if it was held in escrow, I think it would also be fair that whoever won should receive the interest.

Mr. SYNAR. You just mentioned those surety companies, and they had threatened not to bond coal companies if that practice of escrowing was instituted. That sounds like blackmail to me. Doesn't it to you?

Mr. GRYSZKOWIEC. I don't know if that is blackmail or not.

Mr. SYNAR. Can you explain what is happening now with the bond rollover?

Mr. GRYSZKOWIEC. Mr. Wittenburg can answer that question.

Mr. WITTENBURG. In Pennsylvania they have a system which is called bond rollover; whereby, instead of actually physically releasing the bond, you "roll it" over to the next mining authorized area on the same permit.

Basically, the only problem that we have with bond rollovers is that they remove the public from participating as required by the act.

Mr. SYNAR. And also if it is rolled over you could be left without enough money to cover the reclamation, couldn't you?

Mr. WITTENBURG. If it was bad reclamation.

Mr. SYNAR. If it was bad reclamation. You all spent a lot of time in State offices collecting information from the State offices records. Could you characterize for us the records that you found in the various State offices?

Mr. IMBROGNO In both States we attempted to put together a detailed data base so that we could do the bond forfeiture analyses—the time analysis as well as the extent of the problem.

In Pennsylvania, they had some of the information computerized on a microcomputer. There were some gaps in the information, and we had to go through some case files to supplement that information. Sometimes the information wasn't in the files.

In West Virginia, the information was compiled manually, and we had to go through each case file to get the information.

Again, there was missing information in the files. Many of the files did not have the contract award information in it and we had to go to other sites to get that information. Sometimes the information was not there either, so we followed up with the State. In some cases, there was still missing information.

Mr. SYNAR. So, you would characterize it in most States that you looked at as pretty poor recordkeeping?

Mr. IMBROGNO. I would say that it needs improvement, yes; very much so.

Mr. WISE. Several questions. In doing your analysis of West Virginia and Pennsylvania, and I am thinking particularly of the figure you cited on the amount of time from bond forfeiture to reclamation, which I think ran 4 years in Pennsylvania and 2 years in West Virginia.

I am just trying to get a handle on what is the average in the world. Were you able to look at least overall at other States. I know you didn't go in detail, but——

Mr. GRYSZKOWIEC. No, we didn't. We did not look at other States, and I don't know if that data is available.

Mr. WISE. I think as long as we are trying to put things in context, what is acceptable and what then begins to move beyond the realm.

Mr. GRYSZKOWIEC. But this also leads back to the question as to how good the data is? A lot of the data is just not available.

We actually had to develop the files to do an analysis of how long it takes? That is why I don't think that this information is available in the other States, or is not readily available.

Mr. WISE. One concern that this subcommittee has had in the past, and which I am wondering is popping up in this also, let us assume that an operator walks off and forfeits his bond on site A. Are we likely—did you run across instances in either of the States that you looked at indepth where the same operator is likely to show up again on site B or C, be granted a permit even after he has already been known to have forfeited his bond some place else?

Mr. IMBROGNO. We have not seen that situation, no, sir.

Mr. WISE. That is interesting, because I don't see how somebody can walk off and leave a deep mine, and get out—I would be surprised if they are out of the business altogether today. But in your going through the records of the States, could you determine whether they had an adequate way to check back as new permit applications come in, to check against forfeitures that may have occurred previously?

Mr. IMBROGNO. In West Virginia, I don't know exactly what their system is. I can respond to that question for Pennsylvania. They compile a monthly report which is continuously updated. It is maintained by their bureau of mining and reclamation, which is basically their monitoring tool for looking at whether people who

forfeit try to continue mining. This is their mechanism to control that situation.

Mr. WISE. But I have to add that I think it was a year ago when I was up here almost addressing the same question, one of the problems that you run into is that the small operators, especially those that are without a lot of funds, if they abandoned, they usually either changed their names, or they changed—they don't reapply for another permit under the exact same name. So you could have EHB Associates, HEB Associates. Every brother and family member, then starting another permit.

So, you have trouble trying to track down who is the real violator. And right now, OSM is addressing the question of: Well, who actually has ownership and control of these permits to mine?

And that is one of the basic questions that has to be answered, and then how—what type of name or number or identifier can you use so that you can readily, through a computer check, not only with a State, but amongst States, decide whether the same operator is jumping borders or trying to reapply with abandoned lands, or with violations.

In looking at the two States, you cited the figures—various percentages of acres mined and things like that, but I am just curious: How many acres a year, on the average, would be surfaced mined in Pennsylvania and West Virginia, so we can put this in some kind of scale.

West Virginia mines more coal that Pennsylvania does.

Mr. GRYSZKOWIEC. Yes, it does. Almost twice as much.

Mr. WISE. But in terms of surface mining, I am not sure where that ratio breaks out. Do you know?

Mr. GRYSZKOWIEC. I don't know if we have it strictly for surface mining, but I think it is something like 70 million tons versus 110 million tons.

Mr. WISE. Total.

Mr. GRYSZKOWIEC. Total.

Mr. WISE. I think West Virginia got up to about 130 last year.

Mr. GRYSZKOWIEC. They had a good year.

Mr. WISE. More coal mined and less people working, it was a great year. One more good year like this, and we are out of the mining business.

Kind of like oil, isn't it, Mr. Synar.

Mr. SYNAR. That is another hearing, at another time.

Mr. WISE. I would appreciate—I assume that you have basic files of figures on each of the sites in West Virginia that you looked at who the operator was. I would appreciate for my own personal use, I would like to follow that up with the State department of mines. Now, let me ask you how would you express the cooperation given you by each of the State departments?

Ms. CANNON. Extremely well.

Mr. WISE. In both cases?

Ms. CANNON. Yes. No problem.

Mr. WISE. And when you went to these various sites, and brought back your findings or observations, what kind of reaction did you get? Did they respond?

Mr. IMBROGNO. We held exit conferences with them. They generally agreed with the facts that we presented.

Mr. GRYSZKOWIEC. I think everybody is concerned about the abandoned sites. What you run into is a problem with the lack of money and the time it takes to reclaim the site. So, everybody is concerned. It is a matter of how do we tackle the problem?

Mr. WISE. Mr. Chairman, I note that the witnesses have already actually prepared the information I requested, and I ask permission that it be inserted into the record.

Mr. SYNAR. Without objection.

[See slides previously entered into the record.]

Mr. WISE. You made an observation concerning West Virginia. On page 14, the bottom of the page, that you noted more problems—while it seemed West Virginia stacked up comparatively well in some other areas, particularly in dealing with the number of acres reclaimed versus number of bond forfeited acres, but you did note that there were more violations of reclamation performance standards in West Virginia than you noted in Pennsylvania.

I wonder if you have any additional comments or observations on that?

Mr. GRYSZKOWIEC. That wasn't really our observation, it was OSM's. We were just passing on the fact that OSM has been involved in looking at these things. I have to give credit to OSM for being involved.

We had to work very closely with OSM inspectors, because our auditors are not experts. When we went out to the different sites in the two States, we took OSM inspectors with us. The OSM inspectors actually identified the environmental, public health and safety problems that existed on the sites.

Mr. WISE. Thank you very much.

Mr. SYNAR. Thank you, Bob. Again, Mike, Doris, Frank, and Darryl, and all the people who assisted you in this, we do deeply appreciate the effort. I think the work that you have done, as always, has been excellent. It is an excellent update of this problem that we do face. A lot of credit goes to you and your agency, which is a legislative arm of the Congress, and we will be assured of that in maybe the next 10 minutes when the Supreme Court will come down with that decision.

Mr. WISE. Will the gentleman yield?

Mr. SYNAR. Yes.

Mr. WISE. As you say, at least for the next half hour or so.

Mr. SYNAR. Absolutely.

Mr. WISE. But thanks to the gentleman who is chairman of this committee, you may soon be in the executive branch.

Mr. SYNAR. I will just warn everybody who is here if that phone rings within the next 10 minutes, maybe 15 minutes, that will be the Supreme Court, so I may have to go over——

Mr. WISE. Chief Justice Sam Donaldson is——

Mr. SYNAR. That is right. Anyway, thank you all very much.

Mr. GRYSZKOWIEC. Thank you.

Mr. SYNAR. Our next and final panel will be Jed Christensen, Director of the Office of Surface Mining—Reclamation and Enforcement, Department of the Interior, and he will be accompanied by James Workman, Deputy Director for Operations and Technical Services, and Robert Boldt, Deputy Director for Administration and Finance.

Gentlemen, welcome again. As you know, the policy with the committee is to swear in all witnesses in order not to prejudice past, present, or future witnesses. Do any of the three of you have any objections to being sworn in? If not, if you will stand and raise your right hand.

[Witnesses sworn.]

Mr. SYNAR. Jed, your whole testimony will be made part of the record. As always, at this time we would look forward to your comments.

STATEMENT OF JED CHRISTENSEN, DIRECTOR, OFFICE OF SURFACE MINING—RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JAMES WORKMAN, DEPUTY DIRECTOR FOR OPERATIONS AND TECHNICAL SERVICES, AND ROBERT BOLDT, DEPUTY DIRECTOR FOR ADMINISTRATION AND FINANCE

Mr. CHRISTENSEN. Thank you, Mr. Chairman. It is a pleasure to be here, and we appreciate this opportunity to talk to you and your committee about these issues of bonding.

Again, I appreciate that the testimony has been submitted for the record. I would like to highlight some of the comments that are in there, if I could.

We agree that there are many differences of opinion about bonding problems and bonding solutions. We all agree that it is a very complex area and that there are no easy or universal solutions to many of these problems.

However, I would like to relate quickly and concentrate on three specific areas of bonding in my brief remarks. One is bonding adequacy; second, availability; and third, liability.

Quickly, about bonding adequacy, we are putting into place a process to assure that bonds are adequate to do reclamation if a bond is in a forfeiture situation.

One of the first things we have done, and we are just completing is a bond estimating handbook that can be used by our employees in setting bonds. This handbook will be used where the OSM is the regulatory authority, and we are responsible for collecting the bonds and actually contracting for work if the bond is forfeited.

The second thing we are doing is extensive oversight of how the States do bonding, and how they set bonds to make sure that what they do is adequate and correct. There obviously has been a problem.

We have found procedural errors or other problem areas in six States specifically, and have gone in and worked with those States to correct those problems. We have had success, we feel, with those particular States.

Also, based on our oversight findings, we have decided that we need to look more extensively into the bonding practices of States and how they set their bonds through the permitting process.

From our experience in 1985, we set out guidelines for 1986 on how we would evaluate bonds and found that to be very helpful. We are just ending our oversight process now, at the end of this month, so we will be able to determine again if there are additional problems, what they are and how we are going to work that out.

So, bonding will continue to be one of our major oversight priority areas for 1987.

I have also sent out instructions as we prepare our oversight instructions for 1987. We will want to utilize the handbook that we have developed as a reference point in evaluating how the States do determine bond levels to make sure that what they do is reasonable.

The third area is the adequacy of alternative bonding systems, which we primarily utilize our bond pools. As you mentioned earlier, there are five States that use bond pools, and in oversight, obviously, we are concerned about how much is coming in, and how much is going out.

We are also performing several detailed evaluations of Ohio and Pennsylvania's bond pools to determine if they are actuarially sound, and they are an entirely different process than a regular oversight process we are following to make those determinations.

Particularly what we will discuss is the availability of bonds. We recognize the problem of surety insolvencies was particularly focused in Oklahoma, and then spread to other States.

It is very difficult for miners, through no fault of their own, to secure additional bond when a surety has gone under. Although OSM has no direct authority or responsibility for resolving this particular issue, it is an issue that we are very concerned about as far as the industry goes. We have made every effort, starting in Oklahoma and going to other States, to work with the surety industry and the State regulatory authority to make sure these companies do have bonds, but to give them every possible administrative slack we can to allow them to continue mining.

Another area we are working on is bonding availability. We are going to put together a fairly broad-based work group, including industry, surety, State, and environmental-type groups, to see what kind of conclusions and solutions we can come up with.

One thing we will look at, obviously, is other alternatives to existing bonding practices, to assure that we can maintain adequate bonds while mining does continue.

In this policy area, last week I accepted in part a petition for rulemaking from the National Coal Association and the American Mining Congress on the issue of third party bonding. What they are suggesting is that utilities and other big third-party operations be able to participate in the bonding process as guarantors. That is a potential rulemaking that will be coming up shortly.

The third area, which is obviously the most sticky area, and the one that we have been concentrating some on today, is the area of bonding liability.

As you suggested, Mr. Chairman, section 509 of the act requires in the permanent program that adequate bonds be placed by an operator to be sure that reclamation can occur after the mining operation has ceased. This is up through the reregistration process.

I might suggest that section 519 provides a very detailed methodology for releasing permanent program bonds. However, I think we need to be clear that these provisions of the act do not apply to interim program operations.

Section 502 of the act specifies very clearly which parts of the act apply to interim program operations. When Secretary Andrus pro-

mulgated the interim program regulations in December 1977, those regulations did not include a bonding requirement for interim program.

My attorneys tell me, as I am sure Secretary Andrus' attorneys told him, that the specificity in section 502 of what provisions of the act apply to interim programs precluded applying other sections of the act, including section 509 on bonding requirements in the interim program.

Since bonds were not required during interim program, the end of SMCRA liability is not necessarily tied to the release of an interim program bond, and we may want to discuss that more.

When SMCRA liability ends on interim sites, it is a very complex and contentious issue. For that reason OSM is going to be required to do a rulemaking on that to make those determinations.

However, I want to be very clear that when OSM inspects these sites, and there is a violation that exists, our standard operating procedure is to give the State a 10-day notice of that violation, and if the State does not take appropriate action, then OSM does initiate Federal enforcement where we have that authority.

Unfortunately, the validity of our actions has been tested in court with mixed results. And, again, because of that, I think it is incumbent upon OSM to commence rulemaking. We are in the preliminary efforts of proposing such a rulemaking right now.

Also, to make sure that there is no systemic problem with prematurely releasing bonds, both interim and permanent, I have instructed our field offices in three areas to do three things. One is to work with the States to do joint inspections on bond release sites on at least a sample of sites. That doesn't mean that we will go out on every bond release site, but we would take a sample and go out with the State on a joint inspection.

If the State declines our offer to go out with them, then we will do a sample, and before the public comment period closed, we would make written objections to the State if we felt there was still a problem with the site, and that the bond should not be released.

If there is not a comment period available, then we would want to arrange with the State to be able to review the bond before it is released.

In addition, we will continue to do special studies where we feel it is warranted if a State has a particular problem that we feel is a pattern of violations in this area.

I might just mention in concluding two other things. One is the area of preventive maintenance.

I believe that OSM and State inspectors have to be very careful and watch the sites they are inspecting to make sure that if it looks like there is a potential for a forfeiture of a bond because—for some operator, that action is taken very quickly and expeditious enforcement action is taken very quickly to minimize the amount of land that will need to be reclaimed and that the cost of reclamation in the event of bond forfeiture would be minimized.

In conclusion, let me just say that OSM is committed to developing and carrying out a bonding policy which in no way will lessen or relinquish the existing requirements for performance bonds in accordance with the law and regulation and will assure that mined land is properly reclaimed.

I fully recognize that the issues are complex and serious, and we look forward to working with this committee and our own people to come up with solutions to these knotty problems.

Thank you.

[The prepared statement of Mr. Christensen follows:]

STATEMENT OF JED CHRISTENSEN

DIRECTOR

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT, ENERGY AND NATURAL RESOURCES

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

JUNE 26, 1986

Mr. Chairman and members of the Subcommittee, I appreciate this opportunity to appear before you today to discuss bonding under the Surface Mining Control and Reclamation Act (SMCRA). The bonding provisions in the Surface Mining Act are critical to ensuring sound, effective reclamation. These requirements provide the "backstop" to assure that mined areas are adequately reclaimed. Before addressing the specific areas you raised in your letter announcing this hearing, I would like to lay out for you the Office of Surface Mining Reclamation and Enforcement's (OSMRE) objectives and goals with respect to reclamation bonding.

We believe there are five bonding objectives which if achieved will assure sound, long-term reclamation.

First, we are putting in place a process for assuring that bonds are adequate to cover the full cost of reclamation if bond proceeds become the source of funds by which reclamation is achieved.

Second, we will explore viable alternatives to existing bonding practices which will provide a broad range of ways for miners (particularly small operators) to obtain and maintain adequate bonds to pursue coal mining on a continuing basis.

Third, we must provide to the operator and to the surety industry certainty as to bonding obligations under SMCRA.

Fourth, we must assure consistency in the application of regulations which govern bonding adequacy and bonding obligation. Federal and State laws and regulations must provide a consistent baseline for bonding enforcement.

Fifth, we are committed to developing and carrying out a bonding policy which in no way will lessen or relinquish the existing requirements for performance bonds in accordance with the law and regulation.

In your letter inviting me to testify, you asked that I address six specific areas:

(1) actions the Office of Surface Mining Reclamation and Enforcement has taken to ensure that bonds are adequate to cover the cost of reclamation;

(2) actions taken to ensure that reclamation is properly and timely performed;

(3) standards for evaluating alternative bonding systems;

(4) actions since my November 1985 letter to you on Oklahoma bonding issues;

(5) an explanation of the agency's position on bonding under the interim program; and

(6) policy changes we have made since the November 1985 draft management action plan.

I shall address each of these in turn.

ACTIONS TAKEN TO ASSURE BONDS ARE ADEQUATE

The agency is addressing bond adequacy in two ways. First, we are completing a bond estimating handbook for use by our employees in setting bonds. This manual is specifically tailored for use where OSMRE is the regulatory authority responsible for collecting the bond and contracting for the reclamation work. Efforts to make our bond setting approach consistent within the agency were begun shortly after my arrival. Using a special committee dedicated to the task, we began developing a single guidance document last fall. The document is now essentially complete. The handbook uses a standard engineering cost estimating methodology to calculate site-specific bond levels. We anticipate having the manual printed and available to this Subcommittee and the public by the end of the summer.

The second way in which we are addressing bond adequacy is through our oversight of State bonding systems. For the past two years, we have made the review of State bonding practices a national priority in our oversight of State programs. As a result of our 1985 oversight, we found most non-bond pool States were following their approved procedures for setting bond levels. In six States however, we found some procedural problems which we believed could cause inadequate bond levels. When these findings were presented to the States, they made changes to correct the inadequacies. For example, Alabama modified its calculation metholology to adequately estimate backfilling and grading costs. In other States, such as New Mexico, Oklahoma, Kansas, Iowa, and North Dakota, OSMRE staff provided technical assistance to assist in improving their bond estimating procedures.

Based upon our 1985 oversight findings, more specific guidance for evaluating bonding procedures was included in the 1986 oversight guidelines distributed to the OSMRE field offices in November of 1985. The 1986 oversight period will conclude June 30, 1986. As was the case in 1985, we intend to bring examples of specific deficiencies and problems on bonding practices to the attention of the States and work with them to develop action plans for the timely correction of these problem areas. Further, based on our 1985-86 experience, we will develop more precise bonding oversight procedures for the 1987 oversight period focusing on those systemic or process problems which require regulatory or technical changes to correct the noted deficiencies. I have already instructed that during the 1987 oversight period independent estimates of bond amounts be prepared using applicable methodology contained in the OSMRE bond handbook when assessing the adequacy of State bond levels. This will provide a reference point in evaluating State methodologies when determining if State bond levels have a reasonable basis.

ACTIONS TO ASSURE THAT RECLAMATION IS PROPER AND TIMELY

Assuring that reclamation is proper and timely involves the basic elements of the regulatory program. First, performance standards have been developed to determine what constitutes proper reclamation. Second, a permit process applies those performance standards to a particular operation through a technical analysis designed to assure that reclamation is feasible and that an operation and reclamation plan has been developed that will achieve proper and timely reclamation. Third, a bond is required prior to permit issuance which is sufficient for the regulatory authority to accomplish reclamation in accordance with the approved plan should the

operator default. Fourth, the operation is inspected on a routine basis and enforcement action is taken if reclamation is not proper or timely. If the primary enforcement tools such as notices of violation, failure to abate cessation orders, and consequent penalties fail to achieve reclamation, then forfeiture of the associated bond will occur so that the proceeds can be used to achieve reclamation.

These four elements constitute the regulatory scheme for assuring proper and timely reclamation both in State regulatory programs under primacy and in Federal regulatory programs. A primacy State's implementation of its surface mining regulatory program is overseen by OSMRE. Within this regulatory framework, I have taken the following actions to address bonding to assure proper and timely reclamation:

- developed a Federal bond setting manual;
- instituted a system for disseminating information to the States on surety insolvency;
- developed an enforcement strategy for dealing with surety insolvency which was instituted in Oklahoma and provided to other States as guidance for their actions;
- monitored State actions on surety insolvency to ensure that coal mines do not continue to operate without adequate bond;
- included, for the first time, guidance in the 1986 oversight guidelines on what to look for when evaluating bond adequacy and bonding pools;
- written to Missouri under provisions of 30 CFR 732 indicating that the State must modify its bonding program to assure that adequate bond funds are available to accomplish proper reclamation; and
- initiated evaluations of bond pools in both Ohio and Pennsylvania.

Thus far, there have been less than 75 permanent program bonds forfeited to State regulatory authorities and none forfeited to OSMRE. This year's oversight guidance requires the collection of information on whether the revenues from such forfeitures are being used by States for timely reclamation. We anticipate that more information will be available as our field offices prepare their annual evaluation reports.

STANDARDS USED IN EVALUATING ALTERNATIVE BONDING SYSTEMS

For the first time, the 1986 oversight guidelines contained specific questions for evaluating alternative bonding approaches, primarily bond pools. Five states -- Ohio, Pennsylvania, Virginia, West Virginia, and Missouri -- currently use approved bond pools. In such cases, site-specific bond calculation methods are not applicable. Instead, the focus is on the factors which determine the viability of the bond pool and determine the degree of risk against which funds in the pool will be used to provide coverage. Through the annual oversight process, we measure the levels of permanent program bond pools as well as the drawdown and replenishment of the pools. We expect our evaluation techniques for bond pools to improve as we gain more data for a statistical base and gain more experience in monitoring the mechanics of bond pooling.

Currently, the agency is performing more detailed evaluations of Ohio's and Pennsylvania's permanent program bond pools. With respect to the Ohio study, our preliminary results show that, based on the historical average forfeiture rates, the bond pool appears to be sufficient to meet reclamation needs. The Pennsylvania study has not yet progressed to allow us to draw any conclusions as to the adequacy and effectiveness of that system.

Additional special studies may be conducted in the future as the need arises. These evaluations can be complex and must consider the size and diversity of the pool, catastrophic risk factors, and the solvency and "track records" of the majority of the operators in the pool. Assumptions must be made about such factors as bond forfeiture rates, average reclamation costs, and the number of new mines expected during the evaluation period.

ACTIONS IN OKLAHOMA IN RESPONSE TO THE GAO REPORT ON BONDING

As I indicated in my letter to you of November 12, 1985, there were a number of significant accomplishments which we achieved with the Oklahoma Department of Mines to improve its bonding system. I noted at that time we had completed several initiatives in response to the bonding problems in Oklahoma, including providing technical assistance for bond calculations, working out an enforcement strategy which minimized the impacts of the Union Indemnity Surety failure, and assisting in expediting collateral recovery. The enforcement strategy provided considerable flexibility to operators of the 14 mines

affected, particularly where inactive mines were involved, in the steps they were required to take in securing replacement bonds to avoid penalties. This was particularly appropriate because the problem was clearly not of their own making. Since then, we have been monitoring Oklahoma's bonding efforts, including the rebonding of those operators who lost their bond through the surety default. We met with the State in January of this year to express our concern when it appeared that the State was accepting less than adequate replacement bonds for some of the mines. Subsequently, three of the five active mines affected by the default have now secured adequate replacement bonds. Operations have ceased at the other two mines that were active, the operator of one having gone bankrupt. As a result of our monitoring of the State's process of upgrading existing permits, we have concerns that many of the 28 permits currently under review may have inadequate bonds. We have communicated our concerns to the State and are conferring with State officials on the issue.

BASIS FOR NOT INCLUDING BONDING IN THE INTERIM PROGRAM

The draft management action plan distributed in November of 1985 merely restated a position that has been consistent Department policy for eight years and that is based upon the plain language of the statute. Based upon section 502 of the Act, Secretary Andrus promulgated an initial regulatory program on December 13, 1977, that included neither a permitting nor a bonding requirements for mining operations. That position was not challenged in litigation on the interim program. The issue has not been revisited by subsequent Secretaries nor was there any petition from outside interests requesting reconsideration. Section 509 of the Act, which establishes the bonding requirement, and section 519 governing bond release, have always been construed by the Department to apply only to surface coal mining operations conducted under the permanent program. The initial regulatory program requirements in section 502 neither mandate the filing of bonds for surface coal mining operations nor incorporate the provisions of sections 509 and 519.

BONDING POLICY CHANGES SINCE NOVEMBER 1985

OSMRE has given considerable attention to examining the need for new policy to address bonding problems. A preliminary direction was indicated in the advanced draft of OSMRE management planning guidance. The process resulted in a long overdue preliminary assessment of policy needs and problem areas in reclamation bonding. It was not a policy statement; rather it constituted a road map for further study in the complex area of bonding for OSMPE to undertake in the following months.

While there are many differences of opinion about bonding problems and bonding solutions, all agree that the subject is extremely complex for which no easy or universal solutions exist. However, that is not to say that solutions do not exist.

OSMRE does not have direct authority, and thus does not have a capability, for resolving bonding problems resulting from instability in the surety industry.

In our opinion, an important step in addressing these problems is to convene a broad-based work group of representatives of the mining industry, the surety industry, environmental organizations, States, and other groups interested in the reclamation bonding process to study not only the generic but also the specific issues underlying the bonding problem.

It is OSMRE's intention to convene this group in the very near future, to give it technical support, and to provide it broad latitude in developing a wide range of potential solutions to the endemic problems affecting bonding as part of the coal mine reclamation process. We invite the participation of your staff in this activity and hope that we will obtain widespead interest and support.

In a related policy area, last week I accepted, in part, a petition for rulemaking from the National Coal Association and the American Mining Congress on the issue of third party bonding. It is our intention to initiate rulemaking to allow third parties with strong financial interest, such as utilities with mine-mouth power plant operations, to participate in the bonding process as third-party guarantors under the provisions of SMCRA.

I have looked forward to this hearing as a forum for laying out my office's plans for dealing with both the short- and long-term problems affecting reclamation bonding. We have learned a considerable amount about bonding over the last several months and are involved in a continuing maturation process. This hearing provides you, Mr. Chairman, and the members of the Committee the opportunity not only to explore with us what we have done to date but to develop new and better approaches to this problem. We look forward to this opportunity.

Mr. SYNAR. Thank you for your testimony again. Let's get into it. On June 2, the Department issued the following statement about the draft management action plan published in November of 1985. "Although there will be no publication of a comprehensive plan, the management planning process to date has served its purpose, and should provide guidance for addressing key problem areas. Now we are ready to move ahead to improve OSMRE's activities."

In other words, OSM is not going to officially publish the management action plan, but will be guided by it.

Who wrote the MAP?

Mr. CHRISTENSEN. The management action plan was put together by a group of authors in the Secretary's Office, the Assistant Secretary's Office, and OSM.

Mr. SYNAR. Did that team consist of the following people? Earl Gjelde, yes, or no.

Mr. CHRISTENSEN. Earl Gjelde, yes, sir.

Mr. SYNAR. Yourself?

Mr. CHRISTENSEN. Yes.

Mr. SYNAR. Bob Boldt?

Mr. CHRISTENSEN. Yes.

Mr. SYNAR. Jim Workman?

Mr. CHRISTENSEN. Yes.

Mr. SYNAR. Chris Cannon?

Mr. CHRISTENSEN. Yes.

Mr. SYNAR. OK. About when did the process of writing MAP begin?

Mr. CHRISTENSEN. We started in September 1985.

Mr. SYNAR. I understand that the MAP group met for many long hours day after day, without much participation by OSM staff, is that correct?

Mr. CHRISTENSEN. That is basically true.

Mr. SYNAR. How much time did you estimate went into MAP?

Mr. CHRISTENSEN. I don't believe we have done any kind of analysis, but there were numerous hours.

Mr. SYNAR. Several months?

Mr. CHRISTENSEN. Several months.

Mr. SYNAR. Jed, when did you come to OSM?

Mr. CHRISTENSEN. I started at OSM in April 1985.

Mr. SYNAR. Jim Workman, when did you come to OSM?

Mr. WORKMAN. I came on board officially in the middle of October—I think October 15. I was there a month earlier on detail.

Mr. SYNAR. Where did you come from?

Mr. WORKMAN. Department of Energy; Economic Regulatory Administration.

Mr. SYNAR. Bob, when did you come to OSM?

Mr. BOLDT. August the 17, 1985.

Mr. SYNAR. And where did you come from?

Mr. BOLDT. Minerals Management Service—I ran the Royalty Management Program for the Department of the Interior.

Mr. SYNAR. When did Earl Gjelde come to the Department of the Interior?

Mr. CHRISTENSEN. I am not sure of the exact date, Mr. Chairman.

Mr. SYNAR. February 1985 sound in the ballpark?

Mr. CHRISTENSEN. Yes.

Mr. SYNAR. What did he do previously?

Mr. WORKMAN. He was counselor to the Secretary of Energy.

Mr. SYNAR. To your knowledge, did he ever work at OSM, or any State surface mining program?

Mr. WORKMAN. Not to my knowledge, no, sir.

Mr. SYNAR. When did Chris Cannon come to the solicitor's office?

Mr. CHRISTENSEN. I don't have that date.

Mr. SYNAR. March 1983 sound in the ballpark?

Mr. CHRISTENSEN. Yes.

Mr. SYNAR All right. So, let me see if I have got this correct. So, you, with only 6 months of experience in the Surface Mine Regulation Program, had more experience in surface coal mining than did most of the decisionmakers who worked at MAP, is that correct?

Mr. CHRISTENSEN. Well, Chris Cannon had been involved for several years.

Mr. SYNAR. OK. The November MAP draft stated, "At present, there is a crisis in bonding which if not remedied could have a devastating effect on the coal mining industry."

And, "OSMRE stands ready to alleviate or mitigate the uncertainties that negatively impact the bonding requirements for reclamation."

Now, MAP suggests several alternatives, which include third party bonds, an industry bond pool, bonding insurance, catastrophic incident bonding, seeking fund coverage.

It goes on to say, "OSMRE intends to convene a national meeting of coal mining and surety industry representatives to review possible alternatives and other issues affecting bonding."

Now, in your testimony, Jed, you say that, 'It is OSMRE's intention to convene a broad-based work group of representatives," of interested parties, "in the very near future."

Now, frankly, I am beginning to wonder if I am going to see this event ever occur in my lifetime. Could you be more specific for us today and give me a date that you will convene this group?

Mr. CHRISTENSEN. Yes, Mr. Chairman. We have been scoping out this process, and we assume that by September this task group will be put together and be rolling.

Mr. SYNAR. Give me a date?

Mr. CHRISTENSEN. In September, early September.

Mr. SYNAR. So, if we come back here by September 15, that meeting will have occurred?

Mr. CHRISTENSEN. That meeting should have occurred.

Mr. SYNAR. Should have occurred?

Mr. CHRISTENSEN. That is right.

Mr. SYNAR. When will it occur?

Mr. CHRISTENSEN. Well, I am saying in early September we will have that meeting.

Mr. SYNAR. When will you have a finished product?

Mr. CHRISTENSEN. Do you know how long it will take?

Mr. WORKMAN. I think it depends on what you mean by finished product. The idea is to convene——

Mr. SYNAR. Are those words hard? A solution to the problem. When will you have a finished product?

Mr. WORKMAN. The concept behind putting together this group is to address the many problems. To focus heavily in the area of bond availability and to get recommendations.

Mr. SYNAR. We want an answer. When are you going to get a solution to this problem? Give us a date?

Mr. CHRISTENSEN. I wish we could give you a date, and I wish we could give you solutions.

Mr. SYNAR. So, do we. Since you have been talking about it for at least 6 months, would you explain to us what has kept you from doing it earlier?

Mr. CHRISTENSEN. What is that?

Mr. SYNAR. Getting us a solution?

Mr. CHRISTENSEN. I don't think anything we are talking about here is lending itself to easy solutions.

Mr. SYNAR. Why has it taken so long to convene the group?

Mr. CHRISTENSEN. Well, OSM——

Mr. SYNAR. You have been working on this thing for 6 months to say you were going to get the group together. Why hasn't the meeting been held?

Mr. CHRISTENSEN. I don't think that this group is going to give us all the solutions to the problems that were discussed today.

What we are hoping is that we can focus on the actual problems. We have identified some of these problems. There are probably others, and through this group see what is available out there for us to have solutions.

Some of this may require a legislative fix, some of it may be simply a regulatory fix, maybe some of this can be done by policy. Some of it may be by the industry itself.

Mr. SYNAR. You can't get those determinations until; one, you convene the group——

Mr. CHRISTENSEN. That is true.

Mr. SYNAR. Two, offer some solutions, can you?

Mr. CHRISTENSEN. That is right. And that is exactly what I intend to do.

Mr. SYNAR. What sort of a working group is this? Is it going to be a meeting? Is it going to be a task force? What is it going to be?

Mr. CHRISTENSEN. Basically, we assumed this would be a task force. OSM would prepare preparatory materials for this group, trying to define what the problems were, and any ideas we might have. From that point on, we would ask them to proceed to come up with some kind of report for us, with recommendations.

That doesn't mean that there will be solutions.

Mr. SYNAR. All right. I ask unanimous consent at this point that a list of the task forces being established by OSM be included into the record.

[The information follows:]

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

JUN 6 1986

Exh. B

Memorandum

TO: Members of Congress and Staff

FROM: Jed D. Christensen, Director
Office of Surface Mining
Reclamation and Enforcement

For your information, attached are materials which delineate formation of proposed task forcer on state program oversight matters. The task forces are part of recommendations made in the 1985 joint management study conducted by the Interior Department and the House Committee on Interior and Insular Affairs.

The attached information was provided to state officials at our national meeting in Pittsburgh last month. We will continue to keep you apprised of developments in this area.

If you have any questions, please do not hesitate to call the OSMRE Congressional Liaison Officer on 343-2165.

Attachment

Jed D. Christensen

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

MAY 1 1986

Once again your advice and participation are needed in the interests of effective implementation of the Surface Mining Control and Reclamation Act (SMCRA). Because of the timing of the semi-annual meeting between State Regulatory Agency officials and the principal officials of the Office of Surface Mining Reclamation and Enforcement (OSMRE), which is set for May 14, 1986, in Pittsburgh, Pa., we have a valuable opportunity for discussions on ways to strengthen state primacy under SMCRA through possible improvements in the OSMRE state program evaluation and oversight process.

We are preparing to move ahead on a recommended issue resolution approach resulting from the 1985 management study of OSMRE that was conducted jointly by the Department of the Interior and the Committee on Interior and Insular Affairs, U.S. House of Representatives. Congressman Morris Udall, Chairman of the House Interior Committee, and Secretary Hodel have endorsed the major recommendations of the joint study, particularly those calling for the establishment of a Phase II task force approach toward the resolution of several critical program areas, including Federal oversight by OSMRE of the effectiveness of the individual coal states in carrying out their approved regulatory programs under the primacy concept established by SMCRA. As a step in that effort, we have developed some goals and objectives of OSMRE's state program evaluation and oversight process, along with some specific public process approaches toward improving the attainment of those goals and objectives. This material is attached for your review.

The agenda for our May 14 meeting in Pittsburgh includes sessions at which we plan to discuss this material and examine various options for the Phase II task force effort relative to OSMRE's state program oversight. In particular we are interested in obtaining your comments and suggestions on the (1) timing of the task force effort, (2) suggestions for membership, and (3) your ideas on the most effective process to be followed in pursuing the task force efforts. It would be extremely helpful for all those planning to attend the Pittsburgh meeting to familiarize themselves with this material in preparation for our discussions at the May 14th session.

We value the participation of knowledgeable, committed persons and organizations in the continuing task of implementing SMCRA to achieve environmentally sound coal production and effective land reclamation, as intended by Congress for the benefit of the country as a whole. Discussions prepatory to the Phase II task force effort should be a useful forum for channeling your views and ideas into the overall process.

Attachment

MAY 1 1985

Phase II Evaluation of OSMRE's

Oversight of State Programs

I. Introduction

One mission of the Office of Surface Mining Reclamation and Enforcement (OSMRE) is to implement the Surface Mining Control and Reclamation Act (SMCRA) in a manner that provides a stable, consistent regulatory and policy framework, encourages State authority and responsibility, and utilizes an open, public process. In order to fulfill its mission, OSMRE needs to have a method of resolving issues, arriving at policy decisions, and making rules which encourages participation by the involved constituencies because only when all affected parties have an opportunity to present their viewpoints can agreement and consensus be achieved.

OSMRE's strategy for encouraging participation by outside constituencies is an implementation of the Phase II approach recommended in the July 1985 management report of the House Committee on Interior and Insular Affairs. The Phase II methodology calls for the formation of high-level task forces composed of participants from all groups affected by SMCRA to perform in-depth analysis of the significant issues facing OSMRE to attempt to resolve those issues.

Among the most significant of unresolved issues facing OSMRE are the issues dealing with OSMRE's relationship with primacy States. OSMRE is committed to a strong cooperative relationship with primacy States which will encourage State authority and responsibility. In all circumstances, however, OSMRE will take any necessary actions to assure the Act is fully implemented. To achieve these goals OSMRE must have a means of evaluating the performance of the State in implementing its regulatory objectives.

A series of four issues which are basic to the oversight relationship that is set up under SMCRA have been targeted for study under the Phase II methodology. These issues are—

What options are available to OSMRE to encourage superior performance by a State?

How should OSMRE evaluate a State's regulatory performance?

What is the Federal enforcement role in a State with primacy?

What steps should OSMRE take when revoking a State's primacy?

The first step in resolving these issues is to solicit advice on how to conduct these studies, who should participate and when should they be performed. In order to facilitate these discussions, the objectives of the Federal oversight program will be described followed by an indepth analysis of the issues targeted for Phase II study.

II. Objectives

Objectives act as decision parameters and as a focus for future action. The objectives for the implementation and maintenance of an effective oversight program are to—

- Take necessary actions to assure the mandates of SMCRA are fully implemented.
- Assure State regulatory programs are no less effective than the Federal program.
- Assure that State regulatory authorities implement their approved programs and take remedial action when needed.
- Maintain an effective and constructive oversight program that features a cooperative approach to regulatory enforcement, recognizes regional differences, and uses objective criteria for measuring program performance.
- Reinforce the primary jurisdiction of the State regulatory authority as the instrument to assure effective regulation of coal mining operations and subsequent reclamation efforts.
- Assure reclamation of coal mine sites by maximizing the impact of the AML fund, encouraging new mining techniques, and obtaining sufficient bonding.
- Establish a consistent, stable, efficient and effective regulatory framework.
- Establish methods to respond to State performance in a manner commensurate with the situation.

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III. Issues

A. What options are available to OSMRE to encourage superior perfomance by a State?

Congress provided few incentives to reward successful implementation of SMCRA. In addition, Congress legislated few means of compelling State compliance. As a result, OSMRE has had difficulty in taking graduated action commensurate with State performance. Too often, the gradients approach all-or-nothing.

OSMRE seeks to increase the number of options available to motivate States to superior regulatory performance. Therefore, OSMRE is seeking participation of those interested in the oversight process in developing these additional techniques.

Study of Programmatic Response Options

OSMRE will establish a task force to assist in identifying ways to increase the number of available options. The task force will be asked to consider the following items, consistent with OSMRE's mission, objectives and regulatory philosophy, in preparing a proposal—

- Identify all incentives and methods to compel improved State performance articulated directly in SMCRA.
- Identify additional actions which might be taken under the Secretary's discretionary authority.
- Identify objective standards and criteria described as appropriate circumstances for utilizing each recommended action.
- Identify the resource requirements for each recommended action.

The task force is encouraged to investigate such other pertinent matters as are necessary to fully address this issue.

B. How should OSMRE evaluate a State's regulatory performance?

The purpose of evaluating a State's regulatory performance is to identify major issues and trends and, as required, to determine a program for appropriate actions, either by the State or OSMRE. The evaluation method must provide an unbiased, systematic method of measuring and analyzing the State's level of accomplishing their regulatory goals and objectives.

During the tenure of State primacy, OSMRE's evaluation efforts have fallen short of these principles by measuring methods rather than results. A more comprehensive and results-oriented approach is repeatedly called for by the States, the coal mining industry, the Congress, and others. Further evidence of the need to improve the evaluation methods is the recent petition for an oversight rulemaking submitted by a number of special interest groups.

The OSMRE evaluation process needs to be reviewed to determine what changes need to be made. OSMRE feels this review needs the best ideas from everyone and will therefore seek broad public participation.

Study of the Evaluation Process

OSMRE will establish a task force to assist in examining the oversight evaluation process and developing a proposal for an objective, systematic method of measuring and evaluating State performance. The task force efforts should be cognizant of OSMRE's mission, objectives, and regulatory philosophy, and should include—

- A reasonable and adequate set of objective criteria, addressing all elements of SMCRA, to measure State compliance;
- Acceptable, unbiased measuring techniques if it is demonstrated that an on-the-ground, results-oriented evaluation process is not feasible;
- A clear definition of the aspect of the program to be evaluated;
- Standards and guidelines to be used by OSMRE in evaluating the State's performance with respect to those objective criteria established above;
- An unbiased method to be used for drawing a representative sample of sites to use in evaluating the entire State program as well as examining the basis for site selection (stratified, special problem, etc.);
- Standard methods of data collection, preparation, measurement, and analysis, and a determination of the reliability and comparability of the data for each criterion being measured;
- A requirement to clearly document findings in an objective manner, especially noting outstanding program achievements as well as required remedial actions; and,
- An unbiased, fair, objective, and impartial methodology to analyze and evaluate the inspection approach of State and Federal inspectors.

The task force will be asked to examine the following considerations in their analysis—

- Identify public notice and comment requirements. Evaluations may be either internal or external in nature and may have different public notice requirements. Further, to be useful, evaluations must be accurate and timely.
- Identify suggested mechanisms to utilize examples of outstanding regulatory or reclamation results.
- Identify suggested mechanisms to document problems, to implement remedial actions when required, to track their completion, and to promote satisfactory accomplishment.

The task force will be encouraged to investigate such other pertinent matters as are necessary to fully address this issue.

Following the process, described above, OSMRE will be able to utilize known standards in generating special studies, program baselining, annual evaluations and annual reports to Congress. Each of these will achieve a level of consistency because of the application of objective, agreed upon, approaches to evaluation. OSMRE expects the task force effort to provide the means to significantly increase the quality and usefulness of the various types of evaluations.

C. What is the Federal enforcement role in a State with primacy?

Perhaps one of the most controversial issues that separates the constituent groups affected by SMCRA is defining the role of Federal enforcement in primacy States. The perception exists that the original use of the Ten-Day Notice as form of communication between OSMRE and States has been replaced by the tendency to utilize Ten-Day Notices as the effective equivalent of a Notice of Violation (NOV). This trend has paralleled the trend of OSMRE oversight activities to become, in some cases, a duplication of the State enforcement program. The issuance of a Ten-Day Notice creates the perception of a State regulatory program failure.

Many considerations are involved in reaching the conclusion that a violation exists and in determining the most expeditious remedial action to be taken. The relationship between specific physical conditions in areas subject to coal mining and the standards found in various State laws and regulations leave many opportunities to arrive at different conclusions and to propose different courses of action.

When OSMRE and the State regulatory authority agree on the action to be taken by the State following the transmission of a Ten-Day Notice, there is no problem. However, when there is a legitimate difference of opinion as to whether a violation exists, or when OSMRE finds the State action to be inappropriate, current practice has been to order an immediate Federal inspection and, if still needed, to issue a Federal NOV. Issuing an NOV may be necessary, however, it has the potential of undermining the stability of State regulatory enforcement efforts and of confusing the coal mining industry.

There is also the view that section 521(a)(3) of SMCRA restricts OSMRE's authority to issue a Federal NOV in a primacy State in circumstances which do not involve the potential for significant imminent harm. Under this interpretation, a Secretarial action to revoke primacy is needed prior to issuing a Federal NOV.

Study the Use of Ten-Day Notices and NOV's

OSMRE will establish a task force to assist in examining the role of Federal enforcement in primacy States and the use of Ten-Day Notices. The task force will examine the current practice of using Ten-Day Notices and will develop a proposal for improving their use. In addition, the task force will be asked to address the question of the proper role of Federal oversight inspectors in circumstances not constituting imminent harm.

The task force will be asked to consider the following items, consistent with OSMRE's mission, objectives and regulatory philosophy, in analyzing this situation:

- Review the historical use of the Ten-Day Notice and identify problems.
- Review the form of the notice and recommend changes, if any.
- Recommend guidance describing the minimum supporting evidence required for OSMRE to have "a reason to believe a violation exists" prior to issuing a Ten-Day Notice.
- Provide a proposal of how to establish Ten-Day Notices as a communication tool rather than as an enforcement device, while recognizing that subsequent enforcement efforts may be necessary.
- Review the current practice of issuing NOV's and identify problem areas, especially focusing on situations where initiating a program amendment could have been used to correct a deficiency.
- Provide an analysis and a proposal for how to treat interpretational differences including mechanisms for conflict resolution which afford the greatest accommodation and flexibility to primacy States while assuring OSMRE's ability to comply with its statutory mandate.
- Develop a proposal which maintains OSMRE's statutory obligations, permits maximum discretion and self-determination to primacy States, recognizes local uniqueness, and acts to strengthen the State's ability to obtain on-the-ground results.
- Develop other recommendations which are legal, practical, and which provide for consistent enforcement while reducing or eliminating duplication of effort. The recommendation should seek, to the extent possible, to have coal mining operations regulated by one agency.

The task force is encouraged to investigate such other pertinent matters as are necessary to fully address these issues. Following completion of the task force effort, OSMRE will put forth the proposal for public review and comment.

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D. What steps should OSMRE take when revoking a State's primacy?

Primacy revocation is the removal of regulatory authority from a primacy State when it demonstrates the inability to effectively enforce its approved State program. While encouraging and supporting primacy is important, effective enforcement comes first. Therefore, it is necessary to examine and develop an appropriate approach to primacy revocation should the need arise.

Study of Primacy Revocation Steps

OSMRE will establish a task force to assist in examining the use of SMCRA section 521(b). The task force will be asked to consider the following items, consistent with OSMRE's mission, objectives, and regulatory philosophy, in analyzing the use of 521(b).

- Provide a rationale for selecting the program components to be subject to section 521(b).
- Analyze the effects on regulatory program stability and consistency with successive levels of Federal intervention.
- Provide recommendations for employing a mechanism to coordinate Federal-State involvement in the least intrusive and disruptive manner.
- Take into account the importance of positive trends in otherwise substandard program performance.
- Consider the role of remedial action plans, MBO-Type work plans, or other bilateral agreements as alternative means of corrective action.

The task force is encouraged to investigate such other pertinent matters as are necessary to fully address these issues.

The task force will be asked to develop a proposal which meets the objectives listed above and provides the Director with an objective process for initiating a revokation under section 521(b). While awaiting the results of this study, OSMRE will continue to utilize its current approach, but may make an effort to provide more consistent application of appropriate procedures.

IV. Summary

The purpose of forming task forces to study these issues is to allow the parties most directly affected by oversight to bring their expertise to bear on the most critical and most controversial issues associated with the oversight process in the most productive method available.

All four studies will follow the same methodology. A group of knowledgeable and interested persons from outside OSMRE will be assembled to study the issues and recommend solutions to the Director within a prescribed time frame. (OSMRE will develop any environmental analysis required by NEPA to accompany the recommendations.) The Director will evaluate the proposals and implement changes where appropriate.

If a task force fails to arrive at a consensus proposal within a prescribed time frame, the Director will propose an alternative solution for public comment to which the task force can respond. The purpose for setting a time limit is not to limit discussion, but a recognition that the different positions external parties have taken in the past may prevent a consensus.

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Proposal for
Phase II Task Forces
Relative to State Program Oversight

OSMRE will establish four task groups to study aspects of the agency's oversight functions and develop proposals for improving the existing processes and procedures for implementing those functions.

The task groups will focus on the following specific objectives:

1. Increasing range of options for motivating States and industry to fully implement SMCRA.

2. Developing alternatives to the current State program oversight evaluation process.

3. Improving the effectiveness of OSMRE's use of 10-day notices and Federal NOV's.

4. Outlining the steps leading to primacy revocation and establishing criteria for determining whether a State's primacy should be revoked.

Composition of Groups:

The Director will request that the States, industry and the environmentalist community nominate members of their respective groups to serve on these four task groups.

Task groups 1, 3, and 4 above will consist of six members each, including two representatives of industry, two representatives of State regulatory agencies and two representatives of environmentalist or citizen groups. Task group 2 will consist of 12 members, with equal participation from industry, States and environmentalist groups.

OSMRE will designate an OSMRE staff person to serve as coordinator for each group who will be responsible for coordinating the meeting schedules, making arrangements for clerical support for the group, serving as liaison to other OSMRE staff and contracting any technical expertise the group might need.

Each group will designate a chairperson who will be responsible for directing all meetings and preparing the final written recommendations for the Director. In addition, each group will designate a secretary to compile minutes of each meeting and provide support to the chairperson in preparing written recommendations for the Director.

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Study Approach:

The task groups will be briefed by OSMRE staff on existing policy and procedures and provided with resources that have a bearing on the study topic, including criticisms received by OSMRE from the States, industry, Congress or interest groups in the form of petitions, letters, hearing transcripts, etc. After becoming acquainted with the current practices of the agency and developing an understanding of the criticisms of those practices and the problems encountered by OSMRE in implementing its existing procedures or ones previously tried, each group will develop an agenda and strategy, including the formation of subgroups if deemed appropriate, for completing the studies.

OSMRE has provided a list of options or factors for each group to consider in developing its recommendations. Any options listed are not ones which OSMRE specifically endorses, but rather, ones which have been suggested by States, industry, or environmentalist groups. Each task group is encouraged to consider these options as well as any other it deems worthy of consideration which are in accordance with the Surface Mining Control and Reclamation Act of 1977.

As appropriate the task groups will seek input from States, industry, environmentalists or other interested persons or groups and conduct data gathering and fact finding activities as necessary. A Solicitor's office staff attorney and OSMRE staff will be available to provide information or counsel to the groups as required. In addition, the OSMRE coordinator for each group will obtain under contract any technical experts the group might need, although the funds available for such support will be limited. After analyzing and evaluating the data and information collected the task groups will formulate recommendations for the Director in each of the specific areas outlined below. These recommendations will be sufficiently specific to serve as the basis for OSMRE guidelines, procedures or proposed rules if adopted by the Director. The draft recommendations will be submitted to the Director in accordance with the established schedule. After considering the Director's preliminary comments, the task groups will prepare final draft recommendations. OSMRE will solicit public comment on them. The task groups will review all public comments, revise their recommendations as deemed appropriate and submit final recommendations to the Director.

Scope of Task Force Studies:

The scope of each of the four studies to be conducted by the task groups is specified below:

Task Group 1 **DRAFT**

Objective:

To increase the range of options for motivating States and industry to fully implement SMCRA.

Factors or Options to be Considered:

1. OSMRE actions to compel improved State performance which are required under SMCRA.

2. Effectiveness of strategies which have thus far been used by OSMRE to compel improved State performance:

   - development of remedial action plans;
   - conditioning grant funding to State;
   - conditioning Federal lands cooperative agreement with State;
   - increasing oversight inspections and conducting special studies;
   - providing staff assistance and training to State;
   - notifying the Governor of the State of serious program deficiencies and actions required to remedy.

3. Viability and effectiveness of the following strategies thus far untried by OSMRE:

   - providing public acknowledgment of a State's superior performance;
   - reducing oversight inspections and other oversight activities in States with a record of superior performance and, conversely, increasing inspections in States with a record of poor performance;
   - providing a greater share of the Secretary's discretionary AML monies to States with a record of superior performance;
   - providing additional grant funds to States for studies of innovative mining techniques; and
   - providing information to States on innovative and/or effective techniques being utilized by other States.

Specific Areas to be Covered by Task Group Recommendations:

1. Incentives and methods to be utilized by OSMRE to compel and encourage improved State performance consistent with the requirements of SMCRA. This list may include new methods previously untried by OSMRE as well as methods already utilized and determined to be effective.

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2. Specific standards and criteria for utilizing each of the recommended incentives and procedures for implementing the incentives. For example, assuming the recommendations included reduced Federal oversight inspections for States with a record of superior performance, the task group would specify the level of performance to be achieved by the State in order for OSMRE to utilize this strategy and the methodology for determining the reduced number of statistical sample inspections to be conducted.

3. The resources required to institute each of the recommended methods for compelling or encouraging improved State performance.

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Task Group 1 — Milestones

Date	Milestone
June 30, 1986	Establish task group
July 16, 1986	Briefings by OSHRE staff
August 1, 1986	Group agenda to Director
September 15, 1986	Preliminary draft recommendations to Director
October 7, 1986	Director's comments to task group
October 21, 1986	Final draft recommendations to Director; OSHRE initiates public review
December 2, 1986	Task group initiates analysis of public comments and incorporates them into draft recommendations
January 5, 1987	Submit final recommendations to Director for decision
	Implementation steps to be developed following submission of final recommendations to Director

Task Group 2

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Objective:

To evaluate the current OSMRE oversight evaluation process for State regulatory and AML programs and formulate recommendations for revising existing procedures and/or instituting new ones.

Factors or Options to be Considered:

1. OSMRE oversight responsibilities required under SMCRA and OSMRE's regulations.

2. Strengths and weaknesses of OSMRE's current oversight program, including statistical sample inspections and other procedures utilized to evaluate State performance on an annual basis.

3. Strengths and weaknesses of OSMRE's current annual evaluation reports to Congress on State programs.

4. Alternatives to OSMRE's existing procedures for annually evaluating State regulatory and AML programs which accomplish the following:

   - make an objective appraisal of State program accomplishments as well as deficiencies;
   - recognize the relative importance of each situation or factor being evaluated;
   - differentiate between problems resulting in environmental harm or threats of public health and safety and problems which are non-threatening in nature;
   - utilize standard, well-accepted methods of statistical sampling and data collection and analysis;
   - recognize and analyze trends in State performance;
   - can be implemented in a timely manner;
   - measure the State's accomplishments in improving environmental conditions.

5. Alternatives to OSMRE's current methodology and basis for selecting a representative sample of sites for evaluating the State's performance. Specific options to consider include:

   - selecting sites using a stratified sampling technique;
   - conducting inspections immediately following scheduled State inspections;
   - reducing the number of inspections in States with a record of superior performance;
   - increasing inspections in States with special problems.

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Specific Areas to be Covered by Task Group Recommendations:

1. Program categories to be evaluated.

2. Objective criteria for evaluating State performance in each category evaluated.

3. Standard methods of data collection and analysis and the required reliability of the data for each category evaluated.

4. Format and procedures for documenting findings in a timely manner.

5. Procedures for obtaining public input in the evaluation process.

6. Resource requirements for implementing the recommendations.

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Task Group 2 — Milestones

Date	Milestone
June 30, 1986	Establish task group
July 21, 1986	Briefings by OERI staff
August 7, 1986	Group agenda to Director
October 15, 1986	Brief Director on group's progress
January 15, 1987	Preliminary draft recommendations to Director
February 9, 1987	Director's comments to task group
February 23, 1987	Final draft recommendations to Director; OERI initiates public review
April 6, 1987	Task group initiates analysis of public comments and incorporates them into draft recommendations
May 6, 1987	Submit final recommendations to Director for decision
	Implementation steps to be developed following submission of final recommendations to Director

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Task Group 3

Objective:

To improve the effectiveness of OSMRE's use of 10-day notices and Federal NOV's.

Factors or Options to be Considered:

1. Historical use of the 10-day notice and problems encountered by OSMRE.

2. Appropriateness of using the 10-day notice as a vehicle for informing a State about deficient permits or deficiencies in the approved program provisions.

3. Alternatives to OSMRE's current practices and procedures which accomplish the following:

   - establish the 10-day notice as a communication tool rather than an enforcement tool, while assuring OSMRE's ability to comply with its statutory mandate;
   - provide mechanisms for conflict resolution which afford accommodation and flexibility to primacy States while maintaining OSMRE's statutory obligations; and
   - minimize duplication of effort by OSMRE and the States.

Specific Areas to be Covered by Task Group Recommendations:

1. Minimum criteria for issuing a 10-day notice consistent with the requirements under SMCRA.

2. Possible revisions to the form of the 10-day notice.

3. Minimum requirements for documentation supporting issuance of a 10-day notice.

4. Procedures for resolving interpretational differences between OSMRE and the State.

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Task Group 3 — Milestones

Date	Milestone
June 30, 1986	Establish task group
July 16, 1986	Briefings by OSMRE staff
August 1, 1986	Group agenda to Director
October 15, 1986	Preliminary draft recommendations to Director
November 3, 1986	Director's comments to task group
November 18, 1986	Final draft recommendations to Director; OSMRE initiates public review
December 31, 1986	Task group initiates analysis of public comments and incorporates them into draft recommendations
February 2, 1987	Submit final recommendations to Director for decision
	Implementation steps to be developed following submission of final recommendations to Director

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Task Group 4

Objective:

To clarify steps leading to primacy revocation and parameters to consider when determining whether a State's primacy should be revoked.

Factors or Options to be Considered:

1. OSMRE's statutory obligations under Section 521(b) of SMCRA.

2. Recommendations of Task Group 1 regarding options for motivating States and industry to fully implement SMCRA.

3. History of primacy revocation actions initiated or completed by OSMRE and problems encountered, including the effect on OSMRE's resources and staff associated with primacy revocation actions taken in different States simultaneously.

4. Alternatives to OSMRE's existing processes and procedures which accomplish the following:

   - provide for Federal intervention in the least intrusive and disruptive manner;
   - provide an abbreviated "733" process to address deficiencies in State program performance of a lesser magnitude;
   - are consistent with OSMRE's statutory obligation to assist the States in implementing their programs; and
   - take into consideration the effects on regulatory program stability of successive levels of Federal intervention.

Specific Areas to be Covered by Task Group Recommendations:

1. Minimum criteria for initiating the process required under Section 521(b) of SMCRA.

2. Procedures to be followed after initiation of the primacy revocation process.

3. Minimum criteria for Federally enforcing part or all of a State program.

4. Minimum criteria for revoking part or all of a State program.

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Task Group 4 -- Milestones

Date	Milestone
April 1, 1987	Establish task group
April 15, 1987	Briefings by OSMRE staff
May 1, 1987	Group agenda to Director
June 15, 1987	Group briefs Director on status
August 3, 1987	Preliminary draft to Director
August 17, 1987	Director's comments to task group
August 31, 1987	Final draft recommendations to Director; OSMRE initiates public review
October 12, 1987	Task group initiates analysis of public comments and incorporates them into draft recommendations
November 23, 1987	Submit final recommendations to Director for decision
	Implementation steps to be developed following submission of final recommendations to Director

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Mr. SYNAR. If you look at that, Jed, I don't see any task force on bonding. So I guess this is a fairly recent idea, to put this together as a task force, is it not?

Mr. CHRISTENSEN. The information you passed out is information we shared with the States that had to do with an oversight task force. It was not dealing with bonding. We only dealt with——

Mr. SYNAR. It is a task force created by OSM, so this statement you just made that we are going to create a task force on bonding is a recent idea, since it is not——

Mr. CHRISTENSEN. No, absolutely not. The meeting we had in Pittsburgh with the State officials was meant to discuss many issues, one of which was an oversight task force. That doesn't mean that we didn't have every intention of doing a bonding task force and several others.

Mr. SYNAR. But it is not included in all these task forces being created at OSM, so——

Mr. CHRISTENSEN. It wasn't included in this particular material, no.

Mr. SYNAR. OK. Will this task force that you say that you are now creating on this area be subject to the same requirements as the Federal Advisory Committee Act?

Mr. WORKMAN. We are using the term "task force" kind of loosely. Collectively, we are using it kind of loosely.

What we have proposed, and what we have suggested with respect to this area, is that we would initially convene a conference or a seminar of various interested parties, which would include the surety industry, the coal industry, representatives from the States, representatives from the environmental community, to get ideas and recommendations and that we might follow that with some panel activities.

Whether we call those task forces or whether we call them something else is not so important I think.

But we did, initially, in our first advanced draft management action plan that you referred to, and I guess it was in our subsequent draft that you have some information on, talk about task force efforts in kind of a generic sense, and we were talking about task forces in the oversight area. We are talking about, in the same generic sense, doing something of a task force nature in the area of bonding, and something in the area of remining.

Whether we actually would convene task forces as such that would have to be looked at within the confines of the Advisory Committee Act is an issue I would have to leave to our general counsel, but I don't think what we were conceptualizing in this area we considered to be advisory committees.

Mr. SYNAR. Earlier this month I requested all the materials, including special studies and legal analysis, prepared and reviewed in developing the bonding section of the original MAP, and the subsequent drafts.

Much to our surprise and my surprise personally, the only things provided were the summaries of public comments, and the draft MAP itself.

Jed, how can you set the course of the agency on bonding with no analysis such as those I requested?

Mr. CHRISTENSEN. I think we need to discuss a little bit about the theory of the MAP. The MAP was not intended to say we have all the answers, and here they are.

I think a lot of the process of the MAP was simply to say here is a problem area we need to worry about, do something about, and then how are you going to do it, and that is the process we are following.

Mr. SYNAR. With respect to that, in November based upon that, OSM established an ad hoc committee on bonding, made up of OSM employees.

What was it's assignment?

Mr. CHRISTENSEN. I believe the one you refer to is the committee that finalized the bond handbook.

Mr. SYNAR. In other words, "to develop a manual on calculating bonds and how to coordinate information gathering on surety company insolvencies."

Mr. CHRISTENSEN. No, that is a different group. The group we are talking about is the one that actually put together the handbook.

Mr. SYNAR. That is what the manual is.

Mr. CHRISTENSEN. All right. Well, that is the group then.

Mr. SYNAR. Has that bonding manual been completed?

Mr. CHRISTENSEN. The bonding manual has been put out in draft——

Mr. SYNAR. Has it been completed?

Mr. CHRISTENSEN. It is all but completed.

Mr. SYNAR. Is it completed?

Mr. CHRISTENSEN. It is not finalized.

Mr. SYNAR. When will it be completed and provided to the interested parties?

Mr. CHRISTENSEN. End of July.

Mr. SYNAR. Should be, or will be?

Mr. CHRISTENSEN. It should be. There is no reason why it won't be.

Mr. SYNAR. OK. No definitely there either. What else has that committee done?

Mr. CHRISTENSEN. The committee has spent a lot of effort in determining how this handbook would be used, and actually putting it together, and that was their purpose.

Mr. SYNAR. In September, an industry group petitioned OSM for a rulemaking on bonding. OSM published the petition for comment in October, and today you testified that just, "last week," you accepted that petition in part.

Is that correct?

Mr. CHRISTENSEN. That is correct.

Mr. SYNAR. In April 1986, environmental groups filed a notice of intent to use the Department for failure—excuse me—notice of intent to sue the Department for failure to take enforcement action in a variety of matters, including cases involving interim bond forfeitures. Have they filed that suit yet?

Mr. CHRISTENSEN. No, sir.

Mr. SYNAR. Have you taken any positive action which might avert such a suit?

Mr. CHRISTENSEN. Yes, we have.

Mr. SYNAR. What is that?

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Mr. CHRISTENSEN. One thing, we met with the plaintiffs on numerous occasions to determine just what was it they were getting at, because the way they filed the notice of intent basically covered the entire act.

We were concerned about what it was they were actually trying to get at, and subsequent to that, you may know, they have also filed such a notice for the State of Kentucky.

Again, we have been meeting with them to determine exactly what their problems are, and see what kind of resolutions we can either jointly agree on, or that OSM would proceed with.

Mr. SYNAR. Let me see if I can summarize here before I turn it over to minority. Let me summarize what OSM has done since it recognized the existence of, "the crisis in bonding."

OSM has; one, had five people with virtually no experience in surface coal mining regulatory matters, and with no backup study, write down some general ideas about things that could be done.

Two, failed to hold a meeting with interested parties to discuss these issues.

Three, did not respond to an industry petition until last week.

Four, is in danger of being sued for failure to take enforcement action at more than 1,000 operations where State bonds were forfeited, and,

Five, has gotten closer to finishing a bond adequacy manual.

Now, Jed, does this sound like an agency which has mobilized its troops to respond to a crisis which, "could have a devastating effect on the coal industry?"

Mr. CHRISTENSEN. I think to try to lay this on in the last 6 months, that the problem just occurred out of the blue, is erroneous and unfair. The agency has had these problems, and they recognized they have had these problems through six directors and through 8 years of existence.

I think what we have finally done is said, OK, here is the problem. We recognize it and we admit it, and now we are willing to do something about it.

Mr. SYNAR. But you have done nothing.

Mr. CHRISTENSEN. We have done many things, and we are in the process of doing more.

Mr. SYNAR. Didn't I just go through? Do you dispute any of it?

Mr. CHRISTENSEN. That is how you look at it; it is not how I look at it. And this isn't the only problem area, as you well know, that is facing the agency, so we don't spend full-time on bonding.

Mr. SYNAR. I don't have enough time, nor this committee, to go into the other areas of OSM's inadequacy.

Mr. ARMEY. Thank you, Mr. Chairman. I hope you gentlemen will bear with me.

I was not here in 1977. I am not very familiar with the SMCRA. But I am trying to get a fix on the whole problem area, so please let me start at the beginning.

To my knowledge, there are basically two types of entities that can own land in America; private and public.

Help me along, am I right?

Mr. CHRISTENSEN. That is correct.

Mr. ARMEY. And if it is public, we can say the States may own land, or perhaps local government units.

Mr. CHRISTENSEN. Federal Government.

Mr. ARMEY. And the Federal Government. So, for purposes of brevity, let's just talk about three; private, State, and Federal.

Now, I gather what is happening is that people are finding surface coal and wanting to mine that.

Mr. CHRISTENSEN. Yes, sir.

Mr. ARMEY. And the people doing the mining are private mining companies.

Mr. CHRISTENSEN. Yes, sir.

Mr. ARMEY. Mining for a profit, no doubt.

Mr. CHRISTENSEN. That is right.

Mr. ARMEY. And they find these coal reserves on land owned by either private individuals or entities, government entities, States or National. Most of the mining, I am sure, is being done on privately owned land.

Mr. CHRISTENSEN. A large percent in the West is on Federal land, but in the East, most of it is private land.

Mr. ARMEY. All right. Some also takes place on State land, I suppose?

Mr. CHRISTENSEN. Yes, there is some State land, but the majority of it is private and Federal.

Mr. ARMEY. Now, I can assume that a contract to mine the land and/or to reclaim the land after mining can be negotiated between a private company and the private landowner?

Mr. CHRISTENSEN. Yes, sir.

Mr. ARMEY. And I am brave enough to assume that both parties might be smart enough to tend to their own interests?

Mr. CHRISTENSEN. They should be.

Mr. ARMEY. Now, my assumption gets braver as I move from the private parties to the State government. I assume that some agency of the State government would negotiate a contract to mine State land, and I assume that somebody in that agency might be smart enough to negotiate it in a way that protects the interests of the State.

Mr. CHRISTENSEN. Sure, and in the Federal Government it is the Bureau of Land Management.

Mr. ARMEY. OK. Further, being even more brave, I assume somebody in the Federal Government should be smart enough to negotiate a contract that protects its interests.

What we basically have here, then, are some folks who are somewhat disappointed about the nature and type of contracts that they negotiated in 1977. They have a general feeling of disenchantment that although they successfully were able to arrange to have the coal mined, they were not successful in arranging to have the land reclaimed afterward.

Mr. CHRISTENSEN. Yes; reclamation became the problem.

Mr. ARMEY. So, we decided we needed a Federal agency to see to it that lands were reclaimed.

Mr. CHRISTENSEN. That is correct.

Mr. ARMEY. Whether it was our business to do so or not.

Mr. CHRISTENSEN. That is also correct.

Mr. ARMEY. I am thinking in particular in terms of lands owned by the States or the private individuals.

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You know, I have a little difficulty. Suppose that I spent a whole part of my life trying to grow grain in some place like North Dakota and almost going broke doing it. Then all of a sudden someone comes along and tells me he could mine coal there. He negotiates with me a contract to mine that coal, and in that contract he says he will pay me so much a ton for what he takes out, but he will pay me much less if I ask him to reclaim the land afterward.

Now, I might reasonably say to him: Well, don't bother reclaiming it, because I couldn't grow anything worth anything on it in the first place. I might make the decision that I don't want the land reclaimed. Just give me the coal payment, my money, and let me walk.

Would that be my business, if I own the land?

Mr. CHRISTENSEN. Unfortunately, under SMCRA it isn't.

Mr. ARMEY. I understand that. So, I might say that I have a problem with the law, but that is not what we are dealing with here.

Whether Congress was wise or unwise in being responsive to certain environmental groups, who presume that things are their business that are not, we ended up with a law that created your Agency, and charged you with the responsibility to see to it that reclamation was tended to not only with respect to negotiating the contracts to do so, but with the bondings to more or less guarantee that that is done.

Mr. CHRISTENSEN. Yes; to guarantee that there would be reclamation after mining.

Mr. ARMEY. And, I am gathering this from what I am seeing, part of the problem is in some instances, in something I have seen referred to as an interim period, the bonding has not proven out to be very successful.

Mr. CHRISTENSEN. That is correct, Mr. Armey. There was a period of time when the law was passed between that and when the States took over the lead in what we call primacy, where they actually setup their own program that we approved.

There could have been a period there of 3, 4 or 5 years, where the Federal Government was the regulatory agency, and that is the period of time where we have the most concern.

Mr. ARMEY. OK. And your body—what exactly is the name?

Mr. CHRISTENSEN. Office of Surface Mining.

Mr. ARMEY. So, the complaint is that you have not tended to drawing up stipulations regarding what the bonding requirements shall be, and enforcing them and we have ended up with lands that have not been reclaimed to the satisfaction of certain environmental groups.

Mr. CHRISTENSEN. I believe that the concern here is there has been a problem, particularly in this interim program which we call the first initial years, where bonds were not required by the law, and oftentimes there were not bonds put up for reclamation of these lands. The law did not require it.

Mr. ARMEY. This is obviously a very complex issue, and I can understand the concerns. I always try to differentiate in my mind between people who have, in fact, a legitimate right to be concerned, and those who have what I would call a presumptive right to be concerned.

Whether or not I like the act passed in 1977, or you, or even for that matter Mr. Synar, I guess, is not the issue.

The fact is, under the laws that we passed, the question before us really becomes to what extent have you carried out what you were required to do. The purpose of this committee is to provide that kind of oversight and encourage you to meet those requirements.

From my point of view, insofar as I would encourage you to do more or to do better, I would do so with an awareness that we are really asking you to do something that is fraught with all kinds of vagrancies. I would counsel a firm patience on our part, while at the same time encouraging you to find a way to move forward in compliance with the law stipulated in 1977, to the best of your ability.

While I personally recognize that we have passed a law that has made it very difficult for you to do anything that I would understand to be a legitimate and necessary function of the Government, unfortunately we do pass those kinds of laws.

So, I guess until we are able to pass a better law, I will have to encourage you to move forward with it, but I can assure you that I understand that we have given you a very difficult task, and I, for one, will demonstrate as much patience as I can, given the circumstances.

Mr. CHRISTENSEN. Thank you, Mr. Armey. If I could just respond very quickly. I think in hindsight, if Congress knew what they know now about the law, it would be easier to write a better law.

We do have a law in place now and we are going to great efforts to try and implement that law, but obviously there are some real problems with that.

Mr. ARMEY. From my point of view, I think probably you are right. If Congress had taken proper heed of Adam Smith, the law would not have been passed in the first place.

Mr. Chairman, I would like to ask unanimous consent for Congressman Bill Clinger to submit questions to both witnesses for inclusion in the record.

Mr. SYNAR. Without objection, that will be done.

[The information follows:]

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION

JUL 17 1986

William F. Clinger, Jr.
Ranking Minority Member
Subcommittee on Environment,
Energy and Natural Resources
House Committee on Government Operations

Dear Mr. Clinger:

This letter is in response to your July 9, 1986, request that we provide, for the congressional record, answers to additional questions pertaining to bonding systems used to assure reclamation of coal mined lands in Pennsylvania and West Virginia. Your questions resulted from our testimony before the Subcommittee on June 26, 1986. The enclosure provides, by question, our response to the nine questions included in your letter. If you need additional information, please contact Doris Cannon of my staff on 534-6360, or myself on 275-7756.

Sincerely yours,

Michael Gryszkowiec
Associate Director

Enclosure

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ENCLOSURE ENCLOSURE

GAO RESPONSE TO QUESTIONS RAISED BY
CONGRESSMAN WILLIAM F. CLINGER, JR.

(Based on GAO testimony before the Subcommittee on Environment, Energy and Natural Resources on June 26, 1986)

Question 1: With regard to bond forfeiture lands in Pennsylvania, you mentioned that about 15,000 of the 22,450 acres are yet unreclaimed. How many of the unreclaimed sites are currently in the procedural stream leading toward reclamation?

GAO Response: In Pennsylvania, once the bonds on a site are forfeited, the process for getting the site reclaimed begins. The following table shows the current status of the 15,134 unreclaimed acres.

Status	Acres
Under appeal to to the Environmental Hearing Board	8,205
Awaiting bond collection	2,143
Awaiting design and contract award	4,786
Total	15,134

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Question 2: In Pennsylvania, how far along the approximate 4 year process are these remaining sites?

GAO Response: For the acreage reclaimed by the state regulatory authority, it took an average of about 4 years to complete reclamation after forfeiting the bond. However, as mentioned in our testimony, this figure does not fully reflect the impact of the 16 months required for the Environmental Hearing Board (EHB) appeal because about 94 percent of the acres reclaimed in Pennsylvania to date were not appealed. Assuming that the same amount of time will be needed to complete each step in the reclamation process for the 15,134 unreclaimed acres, as it has historically taken, the reclamation completion times for these acres would be as shown below. In looking at these times, a note is required. These projected times are only valid if the money is available to do the reclamation. But, as pointed out in the testimony, the bonds have not been adequate to complete reclamation of bond forfeiture sites and, by the state regulatory authority's own estimate, over $110 million is needed to reclaim these lands.

For the 8,205 acres under appeal

--16 months for the EHB to reach a decision

-- 9 months to collect the bond

--41 months to design the project, award the contract and complete reclamation

--65 months in total

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For the 2,143 acres awaiting bond collection

--8 months to collect the bond

--41 months to design the project, award the contract and complete reclamation

--49 months in total

For the 4,786 acres awaiting design and contract award

--41 months in total (30 months to design and award the contract and another 11 months to complete reclamation)

Question 3: You state that Pennsylvania's track record in reclamation is worse that West Virginia's. What is the total amount of pending acreage in those two states?

GAO Response: The total amount of acreage pending reclamation action in Pennsylvania is 15,134 acres; in West Virginia, 1,789 acres.

Question 4: Is it true that Pennsylvania has more outstanding acreage for reclamation to deal with in the first place than does West Virgina?

GAO Response: Since the Surface Mining Control and Reclamation Act (SMCRA) was passed on August 3, 1977, the bonds on 22,450 acres have been forfeited in Pennsylvania and over 67 percent of this acreage (the 15,134 acres discussed in questions 1-3 above) has not been reclaimed or has not been

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awarded a contract for reclamation. In contrast, in West Virginia the bonds on 6,713 acres have been forfeited since passage of the Act, and of this acreage, 1,789 acres have not been reclaimed or have not been awarded a contract for reclamation.

Question 5: You cite a higher cost of reclamation per acre in Pennsylvania than in West Virginia. Did your study include an evaluation of the quality of reclamation in the two states?

GAO Response: Our study did not include an evaluation of the quality of reclamation on bond forfeiture lands in either state. We did, however, address the quality of reclamation on a limited number of bond forfeiture sites in both states. Since GAO auditors are not reclamation experts, we relied on Office of Surface Mining Reclamation and Enforcement (OSMRE) inspectors to make the reclamation adequacy determinations on these sites.

Question 6: Is it true that Pennsylvania does extensive design and engineering work not necessarily undertaken in West Virginia?

GAO Response: The process used by Pennsylvania to reclaim its interim and permanent program bond forfeiture lands is the same one used by OSMRE to reclaim Title IV lands--that is, lands abandoned before passage of SMCRA. This process requires that each reclamation project be designed internally

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before a reclamation contract is awarded. In West Virginia, this step is not used. Rather, the state regulatory authority requires the reclamation contractor to use the mine operator's reclamation plan as the design for the project. From bond collection to contract award in West Virginia the time averages about 8 months; in Pennsylvania, 30 months.

Question 7: You state that there is no OSMRE design for alternative bonding systems developed. Are you suggesting a uniform system for all sites?

GAO Response: GAO is not suggesting a uniform system for all sites. SMCRA specifies that because of the diversity in terrain, climate, and other physical conditions, the primary regulatory responsibility for surface mining and reclamation should rest with the states. State programs must be no less stringent than the requirements of the Act, but they may differ from state to state. OSMRE is responsible for assuring that the state regulatory programs are consistent with SMCRA. What we are suggesting is that OSMRE develop the criteria needed to assure that these alternative bonding systems, although different, meet the minimum requirements of SMCRA. OSMRE, however, has not assessed the adequacy of these systems to assure that funds will be available to reclaim all potential permanent program bond forfeiture sites.

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Question 8: Regarding bond release, you said in your testimony that you made three site visits which raised questions regarding the propriety of bond release.

a) From a statistical point of view, would you say 3 is a reliable sampling?

b) How soon after reclamation did you visit these sites?

GAO Response: To determine whether bond releases were made in accordance with SMCRA requirements, we reviewed case files of randomly selected bond releases made in 1984 and 1985 at two district offices in Pennsylvania--Greensburg and Pottsville--and at the district office in Philippi, West Virginia. The results of this selection are projectable at the 95 percent confidence level to the district offices, but not state-wide. From this random case file review sample, we selected 8 sites to visit in Pennsylvania and 7 in West Virginia. The OSMRE inspectors accompanying us to these sites assessed the quality of reclamation. They identified reclamation deficiencies on 3 of the 15 sites (20%) visited--2 of which are located in Pennsylvania. The results of this exercise are not projectable state-wide for either Pennsylvania or West Virginia.

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The following chart shows when the bond releases were granted and when we made our visits to the three sites with deficiencies (as determined by the OSMRE inspectors.)

SITE	TIME OF BOND RELEASE	TIME OF VISIT
Site 1 (Pennsylvania)	8/85	11/85
Site 2 (Pennsylvania)	9/85	11/85
Site 3 (West Virgina)	8/85	11/85

Question 9: You mentioned that the alternative bonding system along with the bond posted are insufficient to provide full reclamation. What would you suggest as a remedy?

GAO Response: In our testimony we stated that permanent program supplemental reclamation funds are not presently sufficient to reclaim the remaining interim program unreclaimed acres. We also stated that adequacy of the permanent program alternative bonding systems is unknown because criteria does not currently exist within OSMRE to make these assessments. OSMRE approved the alternative bonding systems in both Pennsylvania and West Virginia without "modeling" them to assure fund adequacy for reclamation of future potential permanent program bond forfeiture lands. We believe that OSMRE, as the lead federal agency in the area, is the logical focal point to develop an approach for resolving the problem of interim program unreclaimed land. With respect to the adequacy of the permanent program alternative bonding systems, OSMRE should assess the adequacy of the systems to assure that they meet the reclamation requirements of SMCRA. To accomplish this, formal criteria is needed.

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Mr. ARMEY. I thank you gentlemen, and I do encourage you to move forward the best you can.

Mr. SYNAR. First of all, as you know I am a dear friend of yours, and you and I graduated from the same school, and that ought to say something about our wisdom.

Mr. WISE. Would the gentleman yield? Did you go to classes on different days, or what?

Mr. SYNAR. This man is old enough to be my father.

Mr. ARMEY. If I am not mistaken, I studied economics and Congressman Synar studied law.

Mr. WISE. Which one is more finite, I wonder.

Mr. SYNAR. Anyway, just to respond to what you said, and you know, I am getting the reputation with respect to OSM as a son-of-a-gun, and I will clean that up for the record.

But the facts of the matter are is that this dad gum agency has been in existence 8 years, and we have gone through six administrators.

Now, they have gosh darn played musical chairs with us. Every time we are about to get them nailed down to make them do something, they come up with a new Administrator and new faces, and then they want a honeymoon period.

We are beyond any more honeymoon periods, any more rotating chairs. People are not being held accountable any more. It is the Department that has got to be held accountable.

Now, I don't like this area. I don't want to spend any more time on this area. I want to get into other areas for this subcommittee, but this thing is so bad, and so consistently ignored, that I have no choice but in behalf of yours and my constituents and all these people, to continue on this.

I don't like bashing this Department. I am a nice guy, but gosh.

Mr. ARMEY. If I might.

Mr. SYNAR. Sure.

Mr. ARMEY. In response to the chairman, he has given me all kinds of surprising news this morning. But I frankly believe, and perhaps we can look into this, that the primary pressure to write the legislation in 1977 probably came from environmentalists as opposed to the people who actually own the land and have a direct interest in it, and I would also guess that we might help the agency—as well as the people who own the land, and want to live off the land, and use the land that they do own—by looking into potential changes in the legislation.

Mr. SYNAR. You are right, but how many do you think don't want their land reclaimed?

Mr. ARMEY. Well, if I owned land, I would settle that with the miner before he set one piece of equipment on my property.

Mr. SYNAR. That is what they are supposed to do through the bonding.

Mr. ARMEY. Well, but you see, I would also have enough sense by virtue of my mother's good advice, to not trust anybody from the Government who came to help me.

Mr. SYNAR. And this is a perfect example why that statement——

Mr. WISE. I hesitate to jump into this philosophical debate except to say that in a perfect world I think the analogy of landowner

dealing in the free market at arm's length applies, except that Adam Smith never lived beneath a high wall, and had the land roll over on him from the adjoining land.

That is the problem, at least in my neck of the woods, with high, mountainous terrain.

Now, in Oklahoma where you can see as far as maybe that corner over there, that is something else, but in West Virginia, Tennessee, in the East, we have a lot of problems with mountains and streams and terrain that is not—where one is dependent upon the other, and that was much of the purpose of this act, so that is just my philosophical thinking.

It is kind of interesting to listen to Adam Smith talk to—well, I wasn't going to say Marx.

Who is a good——

Mr. ARMEY. John Kenneth Galbraith.

Mr. WISE. Galbraith. Thank you very much. Mr. Christensen, several questions. One, I think from your testimony and that of GAO, would you agree that there is this—it seems that there is this gap in that period 1977 during which the interim program begins, to the period whenever a State assumes primacy? Is that a fair assumption?

Mr. CHRISTENSEN. There are some muddy waters there, yes, Mr. Congressman.

Mr. WISE. Well, apparently there are a lot of muddy waters resulting from that period, acid ones also.

What do you say—well, for instance, you saw the pictures, the slides that were presented from Pennsylvania and West Virginia, and in some cases there are some pretty bad situations, and homeowners living immediately adjacent.

What do you say to me, as a homeowner, when I call OSM or call the State which has primacy, and say: "I understand that this is an interim program, but we have a real serious problem out here."

Whose responsibility is it at that point?

Mr. CHRISTENSEN. To start with, it is the operator's responsibility, and going from there it gets a little more murky.

You have to look at every case and determine just what the situations were, and on some of those sites, it seemed like they were mining very close to a home, for instance.

Maybe there is a reason for that. Maybe the homeowner gave them a waiver. Maybe they had a valid, existing right to do that. There could be a lot of reasons why.

Maybe they shouldn't have, and they were probably cited for that. Hopefully they were cited. If the bond has been forfeited, then some further action will be taken based on that original notice of violation.

Mr. WISE. Just as a sidenote, I was interested because in two cases it did seem like the mining was occurring much closer to home than I thought either legislation or regulation permits.

Isn't there a 300 foot——

Mr. CHRISTENSEN. That is right, it is in the legislation, and there are homeowner waivers from that. There are several reasons why people can do it, and there are those instances where it occurs when it shouldn't. And they are cited for that.

Mr. WISE. The management action plan contains the following statement, "The mission of the Office of Surface Mining—Reclamation and Enforcement is to implement the Surface Mining Control and Reclamation Act of 1977 in a manner that assures reclamation of mined coal lands. Abandoned lands disturbed and not restored must be reclaimed whether prior or after 1977."

Will you tell me exactly how you will fulfill your mission to make certain that the land covered by the permits issued during the minimum period and abandoned, is reclaimed?

Mr. CHRISTENSEN. Well, there are several things. One, some of it may not be reclaimed. For instance on sites where there wasn't a bond, there were no funds available for that reclamation, and that site may not be reclaimed at least as we know it.

If there was a bond, and the bond has been forfeited, then the forfeited money can be used to reclaim the site.

Mr. WISE. Suppose an operator responsible for the failure to reclaim an interim site has declared bankruptcy, but the owners who were responsible still had significant assets that could pay for the cleanup.

OSM could go after those individuals to try to get clean up, couldn't they?

Mr. CHRISTENSEN. That is correct. It depends on the kind of bankruptcy, but generally we can go after them.

Mr. WISE. So, that is one option fulfilling OSM's stated mission.

Mr. CHRISTENSEN. That is one way that we do it, that is right.

Mr. WISE. And what is your policy about bringing such cases?

Mr. CHRISTENSEN. Forfeiture cases? Following up on the operator.

Mr. WISE. Yes.

Mr. CHRISTENSEN. The policy is that the State will follow up on the operator, to make sure that they do what they are supposed to do under the interim program.

If they don't follow up, and they don't correct the violations that have been issued, the names of those people and the companies are placed on what we call an applicant violator system [AVS], to make sure they never mine again.

Mr. WISE. Now, let's get into that. That AVS system, which we have discussed in previous hearings, first of all, does that deal with simply the cases that come out of States that do not have primacy, or does that, for instance, have the violators in those States that now have primacy?

Mr. CHRISTENSEN. Ultimately, the information will be on all State and Federal permits.

Mr. WISE. That is the key statement, Mr. Christensen, ultimately.

Because I remember—I don't have much seniority on this committee. I have only been here 3 years, but that has been the representation made in two prior hearings since I have been here, going back 2 years. When does, "ultimately" occur?

Mr. CHRISTENSEN. Maybe I could just quickly tell you what the schedule is for the applicant violator system. As you know, we have been under a court order to develop such a system, and by last November or December we were to have the specifications for such a program on the street.

We met that deadline. The contractor is now in the process of developing the software, and that should be completed in the next several months, at which time the contract has also been let to go out and actually collect the data that would be put into the system.

The system was scheduled for February 1987 for the initial information to be available and to use the system.

You can understand our concern. We hate to get a system up there with information in it that is not good, valid information, and then start to block permit applicants.

So, rather than having the system have that kind of problem, we want to make sure that it really works, so we are looking at October 1987 to have the system operational.

Phase 2 of the study would commence after that, actually State violations.

Mr. WISE. Excuse me. October 1987 is the Federal violations.

Mr. CHRISTENSEN. Federal violations and State permit data that would give us an idea of who owns and controls and that kind of thing.

Phase 3 is air and water quality violations that we put into the system.

Mr. WISE. And when do you predict that will be done?

Mr. CHRISTENSEN. October 1, 1989.

Mr. WISE. Suppose I run the program—Surface Mining Program in a State and a coal company comes, and it is owned by, say, operator A, who applies for permit. I have a feeling, a suspicion that they have not fully completed their permit application regarding bond forfeitures. How can I find out from OSM whether this operator ever forfeited a bond and left an interim site unreclaimed in any State. Who do I call at OSM?

Mr. CHRISTENSEN. You can check with other States.

Mr. WISE. Yeah. So, I have to then, sitting in my State office, I have to call all the other States?

Mr. CHRISTENSEN. That is correct.

Mr. SYNAR. One call can't do it though, can you?

Mr. CHRISTENSEN. What do you mean? We physically can't do it?

Mr. SYNAR. I mean you don't have that information, so we have to go to the States.

Mr. CHRISTENSEN. We don't have that obligation to do that, to provide that information.

However, that information will be loaded into the applicant violator system.

Mr. SYNAR. But don't you have an obligation to oversight the States?

Mr. CHRISTENSEN. The States—it is their obligation to check with other States and see if that is a problem, that is right.

Mr. SYNAR. But you have the job to oversight.

Mr. CHRISTENSEN. Yes, and we check and see if they do it.

Mr. SYNAR. Well, how in the heck do you oversight the States if you don't have the information?

Mr. CHRISTENSEN. We check their permit files to see if that information was requested from other places.

Mr. WISE. Are you now saying, though, that presently you cannot do this, but it is your intention that you will be able to do this at a future time?

Mr. CHRISTENSEN. It is our intention to put bond forfeiture information on the applicant violator system.

Mr. WISE. So, then let's assume this happens in December 1987. Will I then be able to call you from my State office and find out whether this person has forfeited a bond anywhere else?

Mr. CHRISTENSEN. At that point, the system will be available in each of the State regulatory agency offices. They will have a computer terminal, and they will be able to access that information right in their office.

Mr. WISE. So, I won't even have to call you.

Mr. CHRISTENSEN. That is correct.

Mr. WISE. But presently there is no central source to get that information.

Mr. CHRISTENSEN. That is right.

Mr. SYNAR. Let me just, if the gentleman will yield.

Mr. WISE. Sure.

Mr. SYNAR. You heard the testimony of GAO. On the very last question I asked them, which was the adequacy of recordkeeping. What was their response, do you remember?

Mr. CHRISTENSEN. No, I don't remember.

Mr. SYNAR. It was very poor recordkeeping. So here we have this situation. Let me summarize. You don't have the information.

You are required and obligated to do oversight, but you are going to do your oversight depending upon the records of the State, which we now had testimony under oath is inadequate, is that correct?

Mr. CHRISTENSEN. On interim program bonds, we have to remember that there was no such requirement for those bonds.

Mr. SYNAR. I didn't ask you that.

Mr. CHRISTENSEN. I know, but that is the answer I am giving you.

Mr. WISE. Mr. Christensen, thank you. I am going to have to run. Mr. Chairman, Mr. Armey, I leave this version of mining cross fire program, and appreciate the chance to participate.

Mr. SYNAR. Thanks, Bob. Thank you very much. And let me thank you and your staff as well as the State office in West Virginia for all their help, and if you will convey our thanks to them we would appreciate it.

All right, Jed. OSM's position is that they have no responsibility for interim mine sites where the bond is inadequate to cover reclamation, is that correct?

Mr. CHRISTENSEN. I didn't say we don't have any information.

Mr. SYNAR. Responsibility.

Mr. CHRISTENSEN. Responsibility for interim program sites.

Mr. SYNAR. That is your position, right?

Mr. CHRISTENSEN. That is right.

Mr. SYNAR. How much acreage in the United States has been mined under the interim permit, been left unreclaimed and the amount of the bond, whether forfeited or not, was inadequate to cover reclamation.

Mr. CHRISTENSEN. I don't have the information, but I will be glad to provide it.

Mr. SYNAR. You all were asking for that through your field offices on Monday, weren't you?

Mr. CHRISTENSEN. Not that I know of.

Mr. SYNAR. Why don't you see if you can provide that to the committee.

[Information follows:]

Based on OSMRE's best and most recent information, as of Octboer 1, 1985, 2,339 interim program sites, estimated to consist of 77,014 acres, have been left unreclaimed where bonds have been forfeited, forfeiture is in process, or forfeiture is planned. However, not all permitted acres have been mined and/or left unreclaimed. It is likely that in most instances the interim bond is insufficient to achieve reclamation which would completely comply with the interim program performance standards.

Mr. SYNAR. Last October, the Sierra Club asked OSM to evaluate bond adequacy in Pennsylvania, and on January 28, 1986's response, you concluded that such a review would not be necessary because, "Pennsylvania's reclamation problems relate to the inadequacy of bonds on the preprimacy sites."

As you further explained in that letter, "while OSM recognizes that the bonds on interim permits in Pennsylvania are inadequate to cover the costs of reclamation in the event of forfeiture, OSMRE has no authority to require Pennsylvania to adjust the bonds on these permits, or to require DER to increase primacy bond requirements to address preprimacy bond forfeiture inadequacies."

Now, in April 1984, Jed, OSM took over a portion of the surface mining program in Oklahoma. OSM made a specific finding that some of the mines in Oklahoma were inadequately bonded, and required the reevaluation of Oklahoma's action on bond releases.

These bond releases, which were subject to review, included 50 permanent program permits, and this is important now, 423 interim program bond releases.

Now, in response to OSM's objections, the following procedure was adopted in Oklahoma. "If it is found that there is not an adequate bond, and if the area is ready for a bond release, we may reduce the amount to be released from the maximum allowable, thus increasing the amount of the bond held by the State without creating additional financial burdens on the mining company."

The effect of this policy was that reclamation on a particular site of a permit might be completed and adequate, but the bond would not be released. And thus the bond on a remaining permit portion would be increased.

Now, I have just one question about this sequence of events that I have just gone through. What happened between April 1984, when OSM exercised authority to adjust the bonds on interim permits in Oklahoma, and January 1986, when you said that OSM has, no authority to "require Pennsylvania to adjust the bonds on these permits."

Mr. CHRISTENSEN. I will have to do something that I generally try not to do, and that is blame my predecessors.

That I understand from a quick discussion here was a hotly debated issue, and there were people in OSM who decided that is the way they wanted to go, so that is the way they went.

I wouldn't necessarily agree with that policy today.

Mr. SYNAR. So, you would agree then with me that the exercising of this authority in Oklahoma but not in Pennsylvania was not a

fair or evenhanded, or consistent enforcement of the law which Secretary Hodel promised in April 1985, when he first came to OSM, wouldn't you?

Mr. CHRISTENSEN. I don't know if Secretary Hodel or I had anything to do with that action in Oklahoma.

How they handled that then is not necessariiy how we would handle it today. I think maybe you are right.

Mr. SYNAR. It was not fair, evenhanded, or consistent enforcement, was it?

Mr. CHRISTENSEN. That could be.

Mr. SYNAR. I asked you to provide in your testimony an explanation of the legal basis for your position that you have no bonding responsibility in the interim sites. You site relevant sections explaining that it has always been interpreted that way, and you have never been challenged.

I just want to note for the record that there is some legislative history stating that Congress intended that the bonding requirements apply to the interim permit, but I don't want to argue the legal issues here today.

If, in fact, OSM does have authority, my key concerns are—excuse me—if, in fact, OSM does not have the authority, my key concerns are how extensive is the problem, what can you do about it, and what are you going to do about additional legislation, if you feel that is needed.

Let's talk about some of these issues, if we could. Over 15,400 acres in Pennsylvania and about 1,850 in West Virginia have been identified as unreclaimed.

More than 95 percent of the abandoned land involves interim sites. In the cases in which the interim program bond was inadequate, the question is, where will the money come from to assure reclamation of the land?

Mr. CHRISTENSEN. The State of Pennsylvania is very concerned about this, and I understand that they have been working with their legislature to come up with a solution to that.

Obviously, the money is not presently available to reclaim all those lands, and it is going to be up to the State of Pennsylvania to determine where it is going to come from.

Mr. SYNAR. All right. Since GAO published its report in Oklahoma, Jed, only two more sites in the counties reviewed by GAO have been reclaimed, as GAO pointed out this morning.

There is serious question as to whether or not the bonds for the other sites will be collectible. Assuming that they cannot be collected, where will the money come from to assure reclamation of the land?

Mr. CHRISTENSEN. The money may not be available.

Mr. SYNAR. All right. I ask unanimous consent at this time, that a letter dated September 3, 1985, to Chairman Udall of the Interior Committee be included in the record. Without objection.

[The information referred to follows:]

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

Sch. C

SEP 3 1985

Honorable Morris Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In answering questions for the record following the February 22, 1985 hearing before the Subcommittee on Energy and the Environment, the Office of Surface Mining (OSM) indicated in response to question 7 that it was developing a plan to address the interim program bond forfeiture issue. We further indicated that this plan was expected to be completed by June 30, 1985.

I apologize for the delay in providing you with this plan; however, the issue of bond forfeitures during the interim program is extremely complex and interrelated with other enforcement and reclamation problems. As a result, we have considered several different approaches to your questions in relation to our other tasks and concerns. Since I am new to the Agency, it has taken some time for me to sort through the interrelated issues and chart a clear course to answering your questions.

Following a review of available data, it is clear that there is no reliable inventory of bond forfeiture sites. Therefore, we are instructing OSM Field Office Directors to obtain from each regulatory authority the information necessary for an inventory of interim program sites for which bonds have been forfeited. We expect to have this raw data by September 30, 1985 and to have completed the compilation by October 15, 1985. Where the results indicate problems amenable to remedial action, we will immediately notify affected States, and jointly pursue appropriate corrective measures. One example of this process in action involved Oklahoma, where OSM determined that the State lacked sufficient legal staff to proceed against operators to collect bonds after forfeiture had been initiated. As a result, Oklahoma has requested and received additional funding through legislative means to obtain this needed support.

We would be pleased to discuss the results of the inventory once it has been completed. If you have any further questions, or if we can provide you with additional information, please let us know.

Sincerely,

[illegible] REED CHRISTENSEN

Acting Director

Dcc
OSM Subject
OSM Reading
POI
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Director
Deputy Director
OSM-CL
DOI-CL
ASLM-CL
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Interim Program Permit Bond Forfeiture Survey

State_____

		No.	Acres	Bond Amount
I.	Interim Permits in Default			
A.	Permits with bond forfeited	_____	_____	_____
B.	Permits in forfeiture proceedings	_____	_____	_____
C.	Permits which will be, but are not yet in forfeiture proceedings	_____	_____	_____
D.	Totals	_____	_____	_____
II.	Bond Status			
A.	No. of permits (I. D. above) estimated to have insufficient funds to reclaim to interim program standards			_____
B.	Average interim program bond/acre			_____
C.	Estimated average cost/acre to reclaim			_____
D.	Total Estimated Additional Funds necessary to reclaim all sites. (I.D. (Acres) X II. C. - I. D. (Bond Amount)).			_____
III.	Reclamation Status of Forfeited Permits (I. A. Above)			
A.	No. of permits in the reclamation planning/design stage			_____
B.	No. of permits in reclamation contracting/bidding stage			_____
C.	No. of permits with reclamation work in progress			_____
D.	No. of sites reclaimed to interim program standards			_____
E.	No. of sites reclaimed to the extent possible but not to interim program standards			_____
F.	No. of permits not yet in Stages A - E above.			_____
G.	No. of forfeited permits known to be causing serious enviormental problems			_____
H.	No. of III. G. permits not yet in stages A - E above			_____

IV. State Interim Program Bond Forfeiture Inspection and Enforcement Activities

A. Does the State retain bond forfeiture and abandoned sites on their inspectable units list and consider them as inspectable units for inspection frequency purposes? At what frequency does the state inspect forfeited or abandoned sites?

B. When forfeited or abandoned sites are inspected and existing (uncited) or new violations are observed, does the State continue to issue enforcement actions for every violation?

C. Does the State systematically pursue each or any forfeiture cases through alternative enforcement measures? Describe the system and alternative enforcement mechanisms.

D. Does the State deny permanent program permits based on a person's default and forfeiture of an interim program permit?

E. Does the State have authority, and if so, do they pursue legal action to seek recovery of reclamation costs in excess of interim program bond amounts? Is this done in every case?

V. OSM Interim Program Inspection Activities

A. Are bond forfeiture permits deleted from the OSM inspectable units list and kept separately, or, if not, are they sorted out and omitted when a statistical sample is drawn?

B. Are special study inspections conducted of abandoned or forfeited minesites? Describe how often, how many, and for what purpose.

C. How many inspections have been conducted on forfeited sites (1) since primacy and (2) in FY 1985 alone?

D. During inspections of forfeited sites where existing (uncited) or new violations are observed, are all violations cited by means of a ten-day notice or other enforcement action as appropriate?

E. If bond is insufficient for reclamation in accordance with interim program standards on forfeited sites, and the site is reclaimed to the extent possible using available funds, what position has the Field Office taken with respect to the necessity for further enforcement to acheive complete reclamation?

VI. State Interim Program Bond Forfeiture Procedures

A. Does the State apply permanent program bond forfeiture procedures to interim program permits forfeited after primacy?

B. Do the various stages in the interim program bond forfeiture process progress in timely manner? What is a reliable average time period from forfeiture notice or documented noncompliance to actual reclamation work?

C. Where the State bond forfeiture process is unreasonably slow, identify and concisely explain the stages which cause the most significant delays within the regulatory authority.

D. Where the bond forfeiture process is slow as a result of the regulatory authority's dependence on their legal department or other State bodies required to be involved in the forfeiture process, identify the bodies and explain the extent of the problem.

E. Does the State have adequate staffing to process and reclaim bond forfeitures in a timely manner?

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VII. Supplemental Reclamation Funds

A. Does the State have an approved alternative bonding system which establishes a common fund or bond pool to supplement forfeited bonds?

B. If such a fund exists, are these funds used to supplement interim program forfeited bonds? If so, is the fund sufficient to supplement all interim program forfeitures?

C. Does the State have any other available funding programs to supplement interim program bond forfeitures?

Mr. SYNAR. In this letter, Jed, you describe an inventory of bond foreclosure sites being conducted, and state, "where the results indicate problems amenable to remedial action, we will immediately notify affected States, and jointly pursue appropriate corrective measures."

Your letter gives Oklahoma as an example of this process in action. Now, let's look at the data that OSMRE has compiled.

I ask unanimous consent that exhibit D, a letter dated November 12 from you to Chairman Udall be included in the record.

[The information referred to follows:]

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

Exh. D

NOV 12 1985

Honorable Morris Udall
Chairman, Subcommittee on Energy
and the Environment
Committee on Interior and Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In my letter of September 3, 1985, I advised you that we would have to survey the States to obtain information on the status of interim program bond forfeitures.

Enclosed is a summary which represents an estimate, by State, of the number of sites for which forfeiture is indicated and the status of the forfeiture proceedings. Where bonds have been collected, the status of reclamation efforts by the States is also provided. We are working with the States to encourage collection of remaining bonds and reclamation at those sites.

In the 1986 permitting oversight program, we have included evaluation of State permanent program bonding mechanisms and bond forfeiture procedures as national objectives to assure that forfeiture problems similar to those experienced in the interim program do not recur.

If I may be of further assistance, please let me know.

Sincerely,

[illegible] JED CHRISTENSON

Acting Director

Enclosure

Bcc
OSM Subject/OSM Reading/AD-TO/RIM
SOL/Director/Deputy Director
OSM-CL/DOI-CL/AS/LIT
Inspec. Chron
Inspec. subject
OSM:DGtocker:elg:7/13/85#1409A:retype:elg:10/29/85

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INTERIM PROGRAM BOND FORFEITURES - OCTOBER 1, 1985

STATUS OF FORFEITED BONDS

STATE	FORFEITURE PLANNED BUT NOT INITIATED		FORFEITURE IN PROCESS		BOND COLLECTED		TOTAL	
	# PERMITS	ACRES	# PERMITS	ACRES	# PERMITS	ACRES	# PERMITS	ACRES
AL	0	0	186	5,768	138	4,351	324	10,119
AR	2	101	4	86	24	340	30	527
CO	1	5	0	0	1	22	2	27
IL	0	0	7	226	6	63	13	289
IN	31	1,025	9	228	21	344	61	1,598
IA	0	0	0	0	2	35	2	35
KS	0	0	0	0	2	190	2	190
KY	UNKNOWN	UNKNOWN	174	4,665	433	9,112	607	13,776
MD	0	0	1	6	13	739	14	745
MO	0	0	0	0	2	152	2	152
NM	0	0	0	0	1	35	1	35
OH	0	0	10	365	91	3,186	101	3,551
OK	0	0	34	3,180	30	2.005	64	5,185
PA	60	2,902	268	12,442	249	7,239	577	22,583
TN	16	709	116	3,655	71	1,521	203	5,885
VA	0	0	0	0	119	6,120	119	6,120
WVA	33	1,486	19	437	164	3,634	216	5,557
WY	0	0	0	0	1	640	1	640
TOTALS	143	6,228	828	31,058	1,368	39,728	2,339	77,014

INTERIM PROGRAM BOND FORFEITURES - OCTOBER 1, 1985

STATUS OF PERMITS FOR WHICH BOND HAS BEEN COLLECTED

STATE	PENDING	DESIGN STAGE	CONTRACT OR BID STAGE	RECLAMATION IN PROGRESS	RECLAIMED PERMITS	AVERAGE BOND $/AC
AL	20	2	6	5	105	1,200
AR	11	2	0	4	7	500
CO	0	0	0	0	1	2,424
IL	0	0	2	0	4	—
IN	10	7	0	0	4	3,643
IA	0	0	0	0	2	714
KS	0	1	0	0	1	989
KY	102	146	20	48	117	1,200
MD	0	2	0	2	9	1,500
MO	0	1	0	0	1	750
NM	1	0	0	0	0	5,000
OH	24	29	2	11	25	1,907
OK	0	8	5	1	16	937
PA	193	21	0	13	22	900
TN	17	0	0	27	27	1,294
VA	8	3	3	1	104	800
WVA	0	25	0	37	102	1,000
WY	1	0	0	0	0	909
TOTALS	387	247	38	149	547	WEIGHTED AVERAGE 1,135

Mr. SYNAR. Now, it transmits a summary of the estimate of the sites for which foreclosure is indicated. It shows that overall, of the identified permits, reclamation had occurred on only 23 percent of the permits.

There is no data regarding acreage reclaimed. Oklahoma is slightly above the 23-percent average, with 25 percent reclaimed permits. Twenty-five percent is not a very good record. But some of these other States were a lot worse off.

Now, Indiana, for example, had only 7 percent of its forfeited bond interim sites reclaimed. Kentucky, 19 percent. Pennsylvania, 3 percent. In Tennessee, 13 percent.

My question to you, Jed, is this; When you saw these figures, which suggests a poor reclamation record on interim sites, what instructions did you give the field office directors about what corrective action to take?

Mr. CHRISTENSEN. Again, I guess I have to fall back to the knowledge that no bond was required to reclaim these sites for the interim program.

Mr. SYNAR. So, no communications regarding this problem went out to the field?

Mr. CHRISTENSEN. It is the States problem.

Mr. SYNAR. OK. In the States that I just named, Indiana, Kentucky, Pennsylvania, and Tennessee, what was the problem, what joint corrective action was taken, and what is the current status of reclamation, do you know?

Mr. CHRISTENSEN. No, but I can certainly get you that kind of information.

Mr. SYNAR. All right. We would like that for the record, please.

[The information follows:]

The two basic problems regarding interim program bond forfeiture in Indiana, Kentucky, and Pennsylvania are that the bonds are generally inadequate to perform required reclamation and the length of time required from initiation of bond forfeiture to actual reclamation. OSMRE Field Office Directors have addressed the interim program forfeiture issue with these States. In Indiana, this subject was discussed in several monthly meetings with the State resulting in the preparation of a forfeiture priority list and a substantial increase in the number of permit revocations which is a prerequisite. In Kentucky, the OSMRE Field Office has identified elements with that State's forfeiture procedures associated with delays and is providing recommendations intended to expedite reclamation. Working with OSMRE, Pennsylvania has developed a long term program to resolve its interim bond forfeiture problem which supplements inadequate bond amounts with funds from the general revenue and other sources. Tennessee is now a Federal program state.

Mr. SYNAR. OSM is now running the program in Tennessee. What are you doing about the interim program sites in Tennessee?

Mr. WORKMAN. We have responsibilities for taking enforcement action on interim programs.

Mr. SYNAR. What are you doing?

Mr. WORKMAN. As far as the bonds go, we did make recommendations to the State when we took over that program that 400 of the sites had outstanding violations on them, and that we thought that the State should take actions under its State program——

Mr. SYNAR. What are you doing? What is happening? Anything?

Mr. WORKMAN. If these interim sites have not been released, and I am not talking about bond release, but release from the jurisdic-

tion of SMCRA, which means that they have not been reclaimed, we are continuing to do inspections.

We are continuing to issue NOV's. To take appropriate enforcement actions——

Mr. SYNAR. I want a list from Tennessee of every one of those actions that you have taken, OK?

Mr. WORKMAN. OK, we can do that for the record.

[Information not supplied at time of printing.]

Mr. SYNAR. Now, the fiscal year 1986 appropriations, the House committee added funding for OSM for 34 additional full-time equivalent positions or FTE's for inspections.

The committee described in its report how it wanted the money to be spent, which included the following specific instructions, quote, "the remaining 11 FTE's are to be used for inspectors in Kentucky and Virginia to examine all bond forfeiture records, and inspect these sites on a priority basis if it is determined that the State is not responsible for this inspection."

In March when you appeared before the appropriations subcommittee to discuss OSMRE's fiscal year 1987 budget, Sid Yates was most unhappy that fiscal year 1986 was quickly coming to an end, and that you had hired only 23 of those 34 people.

How many of the 11 bond foreclosure inspectors are now on board?

Mr. CHRISTENSEN. All of them but two. Those positions have been offered, and it is just a matter of filling them.

Mr. SYNAR. Our personnel records review showed that only four are on board. Are we wrong, or are you wrong?

Mr. CHRISTENSEN. Are we talking about Kentucky specifically here?

Mr. SYNAR. Bond forfeiture inspectors. How many of the 11 bond forfeiture inspectors are now on board?

Mr. BOLDT. To the best of my knowledge, Mr. Chairman, nine are, and we have commitments on two others.

Mr. SYNAR. OK. For the record, we would like the names of those nine people.

[The information follows:]

Item #4

Attached is a list of the bond forfeiture positions included in the FY 1986 OSMRE budget. A ninth position was also filled but selectee declined the position immediately before he was to report for duty.

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LEXINGTON FIELD OFFICE
Pending Positions

DR. OF REGULATORY PROGRAMS

1 Daniel Dunn, Reclamation Bond Specialist, GS-1001-13

DR. OF SPECIAL ASSISTANCE

2 Joseph Blackburn, Supervisory Program Specialist, GM-340-14

3 Gail Smith, Surface Mining Reclamation Specialist (Civil Procedures), GS-1001-13

4 Vacant, Civil Engineer, GS-810-13 — VA86a-34, Returned w/o action per dept. request on 6/23/86.

5 Dana Spalding, Secretary, GS-318-5

LOCATED IN LONDON AREA OFFICE

6 Albert Freeland, Surface Mining Reclamation Spec., GS-1001-12

7 Patricia Beatty, Secretary (Typing), GS-318-5

LOCATED IN LONDON AREA OFFICE

8 Gary Francis, Surface Mining Reclamation Spec., GS-1001-12

LOCATED IN HAZARD AREA OFFICE

9 Vacant, Surface Mining Reclamation Spec., GS-1001-9/11/12 — Received 2/28. Pending OPM cert since 3/10/86. Canvassing cert for interested candidates since 3/12/86. Cert issued 4/8/86 to dept. for selection. Second cert issued 5/22/86 to dept. for selection. Cert cancelled, to be announced.

VIRGINIA FIELD OFFICE
Pending Positions

10 Vacant, Clerk-Typist, GS-322-4 — VA 86a-75, closes 7/3/86.

LOCATED IN LEBANON AREA OFFICE

11 James Wagner, Area Office Manager, GM-340-13

Mr. SYNAR. All right. Let me quote to you from page 289 of the March 5, 1986, appropriations hearing record:

Mr. YATES. When are you going to hire the balance?
Mr. CHRISTENSEN. We are in the process of doing that now.
Mr. YATES. Fiscal year 1986 will be ended before you get them hired.
Mr. CHRISTENSEN. They will be hired by April 8. We have started now to do it.
Mr. YATES. On your mark, get set, go. What are you—waiting until right now? So, the question is, what happened?

Mr. CHRISTENSEN. I don't know if that is what they were talking about, or if they were talking about the 2-acre task force positions.

Mr. SYNAR. How many sites have the inspectors identified in Virginia and Kentucky that involved interim bond forfeiture, and what are there status?

Mr. CHRISTENSEN. Are we talking about interim program bond forfeiture sites?

Mr. SYNAR. Yes.

Mr. CHRISTENSEN. Is that something we can provide for the record?

Mr. SYNAR. Yes, but you have less than 3 weeks to do it. OK? A 3-week limit. Agreed.

[Information not supplied at time of printing.]

Mr. CHRISTENSEN. If we can gather the information.

Mr. SYNAR. A 3-week limit, agreed?

Mr. CHRISTENSEN. If the information is available, we will provide it to you.

Mr. SYNAR. Let me tell you something. That is another thing. I just might as well bring that up now. You are one of the toughest darn agencies to get information out of, and we have played by the rules. We have coddled you. We have held your hand, we have done all this.

We are going to start setting time limits on this thing. and if we have to buck this to Don, I will. But we want some cooperation down there.

Mr. CHRISTENSEN. Mr. Chairman, I don't have any problem cooperating with you. If the information is available, we are more than happy to provide it to you.

Sometimes this information is not readily available, and to make commitments that we will provide it to you, and then not be able to, just exacerbates the problem.

Mr. SYNAR. That is part of the problem. The information isn't available.

All right. Last winter, GAO published a report about OSM's oversight practices, and except in very limited instances the Department had not reviewed the bond adequacy in primacy States.

I expressed concern to Secretary Hodel about the lack of, "even-handed enforcement of the law."

For example, Oklahoma was one of the few States where bond adequacy was being assessed by the Office of Surface Mining. Thus, Oklahoma, I felt was being held to a different standard.

Secretary Hodel responded to me, "That new oversight guidance had been developed," and he was, "Confident of the guidance now in place will resolve many of the concerns."

At this time, I will ask unanimous consent that a section from the outline for the State evaluation report of 1986 oversight reviews be included in the record and labeled "exhibit E."

[The information follows:]

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Exh. E

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

Memorandum

To: Assistant Directors, Field Operations
Field Office Directors
Technical Center Administrators

From: James W. Workman
Deputy Director, Operations and Technical Services

Subject: Final Fiscal Year 1986 Annual Format and Outline

Attached for your use is the final annual State evaluation report format and outline for fiscal year 1986. This year's format and outline is a continuation of our efforts to review State program evaluation procedures to develop and refine the process to address concerns expressed by the States, the Congress and other interested parties.

The new initiatives and directions included in the FY 1986 format and outline embrace the key concepts of the Management Action Plan. This document is fully consistent with the Management Action Plan and provides a foundation upon which future actions can be structured.

I urge you to provide copies to your respective States and discuss the document with them as soon as possible.

Attachment

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NOV 27 1985

Office of Surface Mining Reclamation and Enforcement

Fiscal Year 1986 Annual Evaluation Report

for the

Regulatory and Abandoned Mine Land Reclamation Programs

under the

Surface Mining Control and Reclamation Act of 1977

in the State

of

_____

For the Period

July 1, 1985 to June 30, 1986

Month/Year

FY 1986 STATE PROGRAM REVIEW HIGHLIGHTS

FORMAT REVISIONS

The format used for the FY 1985 reports has been revised for the FY 1986 reports in the following respects.

- Tables that merely provide data have been removed from the body of the report and placed in an appendix. Certain tables included in the FY 1985 format have been eliminated and several new graphs have been added. The purpose of the new graphs is primarily to "interpret" data gathered by OSM during the evaluation period. Preparation of the graphs for the regulatory programs will not require any new data gathering.

- As was the case for the FY 1985 reports, OSM's evaluation findings are presented by program area, e.g., permitting, inspection and enforcement, etc. The FY 1986 format has been revised to include "summary findings" for each program area. These findings, which appear at the beginning of each section, should be very concise. A paragraph under each of the specified headings should be adequate. The summary findings should clearly indicate whether OSM determined the State's performance in each area to be generally satisfactory, generally satisfactory with minor problems or generally unsatisfactory. Next to each summary finding there should be a cross-reference to the detailed discussion of findings. If OSM has found the State's performance to be unsatisfactory, some clarification should be provided as to the seriousness of the State's failure to adequately implement its program in this area (how many operations are affected? What are the environmental consequences? etc.).

- A new section has been included at the end of the findings for each program area entitled "implementation issues". This section addresses only those major implementation problems not yet resolved. An explanation is to be provided of the actions which have been taken by OSM and the State to resolve the problem and the action plan and timetable for final resolution of the problem.

- In the permitting section OSM's review findings are to be presented in two parts. The first part includes the results of OSM's administrative completeness review. The second part presents OSM's technical evaluation findings, including findings on national priority issues. Analysis of the adequacy of the bond amount will be completed as part of the permitting oversight review and OSM's findings presented under the permitting section of the evaluation report. Therefore, a section on bond setting is no longer included as a separate section in the format.

- Under the enforcement section, the Field Office is required to present the findings of OSM inspectors on special inspections conducted within five days of State inspections. It will be the Field Office Director's responsibility to determine the extent to which his/her resources can be utilized to carry out these special inspections.

- All data in tables or graphs for the current evaluation year should be for the period July 1, 1985, through June 30, 1986. If data is requested for prior years, it should also be for a July 1 through June 30 period (e.g., July 1, 1984 through June 30, 1985, and so forth). If this is not possible then the data should be provided for a twelve month period and the table or graph footnoted to identify the exact period of coverage).

FORMAT QUESTIONS

For each program area, questions have been provided in the format as guidelines for the field office for conducting the evaluation of the State's program and for presenting OSM's review findings in the evaluation report. For those program areas where OSM has determined that the State is adequately implementing its program, the discussion of OSM's findings should be succinct. A detailed response to a question is necessary only if a program implementation problem has been identified.

OUTSIDE INTEREST GROUP INPUT TO ANNUAL OVERSIGHT PROCESS

As early as possible, each FOD should contact outside interest groups (State coal associations and State environmental groups) to determine their areas of interest and devise State specific oversight plans which will address the concerns identified by these groups.

PREVIOUS YEAR FINDINGS

Each year the report format has specified that findings on the State's performance for the current evaluation period shall be compared with OSM's findings for the previous evaluation periods. In general, the evaluation reports for FY 1985 did not satisfactorily discuss the State's prior performance. It is essential that the report present the discussion of all problems and accomplishments in the context of the State's prior performance in that area.

SAMPLING

In many cases, the number of inspection reports, assessments documents, etc., is too great for a Field Office to review all documents. In such cases the Field Office should select a sample to review. The purpose of sampling is to provide sufficient information so that inferences may be made concerning the characteristics of the population. If findings are based on the review of a sample, the report should specify the size of the sample, the size of the population from which the sample was selected, the basis for selecting the sample, and the statistical validity of OSM's findings.

EVALUATION FILE

The Field Offices and the Technical Centers will prepare a program evaluation file for each State which will be available for public review as part of the annual review process. The evaluation file will include the following in chronological order:

- Factual information developed or utilized in the program review
- Format/guidelines/methods used for completion of the evaluation and the preparation of the evaluation report
- Correspondence with the State, meeting notes concerning the program evaluation or issues reviewed by OSM
- Draft reports circulated outside OSM
- All public comments, complaints, observations on the evaluation report

Generally, the information that should be in the file should be included as soon as it is available. Recommendations, etc., that have not been cleared with OSM Headquarters and/or given to the State should not be included in the file until that time. Staff notes, working papers, etc., that are preliminary in nature should not be included.

Upon completion of the Technical Center's permitting evaluation for a State, the Technical Center will provide a copy of the permitting evaluation file for the State to the Field Office.

The evaluation file does not replace the administrative record. Some of the documents that are to be included in the evaluation file might also be appropriate for the administrative record. Generally speaking, however, most of the documents to be included in the evaluation file would not normally be included in the administrative record.

NATIONAL OBJECTIVES

Three national objective evaluation topics have been established for the FY 86 evaluation period. These pertain to the following: 1) bond determinations, 2) bond forfeitures, and 3) historic and cultural resources. The questions to be addressed with respect to each of these have been incorporated into the format.

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b. Technical Review:

- For each subject area of permitting or bond setting selected for review by the Advance Team for in-depth technical review, and those permitting or bond setting areas chosen as OSM National Objectives:

  Identify the subject area of permitting or bond setting evaluated and the program standards relevant to that area;

  Provide detailed information to support the significant findings;

  Analyze and make a judgment as to whether identified deficiencies are programmatic or procedural;

  Explain effects of deficiencies on implementation or operation of the State Program;

  Explain effects of deficiencies on other phases of the program;

  Identify actions needed to correct deficiencies;

  Identify achievements in the State's permitting or bond setting programs.

c. National Objective Evaluation Topic:

Adequacy of State's bond determinations or of State's alternative bonding program.

Bond Determinations

(Note: If the State has an alternative bonding program, the questions under this section may not be applicable.

Amount of Bond

- Is the RA following approved procedures for determining bond amount? Is the RA making independent calculations, allowing for cost associated with contracting a third party, equipment mobilization, administration, consulting and engineering?

(Identify the methods utilized to evaluate the State's adherence to approved program procedures. Identify the number and types of documents reviewed.)

- Are bond amounts set by the RA adequate to cover the cost of reclamation at all times during the liability period?

(Explain fully the methods utilized to evaluate the adequacy of bond amounts. Identify the number and type of any documents reviewed.)

- Is the State requiring the minimum amount of bond regardless of acreage?

- Does the State require adjustments of bond coverage as the permit acreage is revised or other relevant conditions change? How does the State identify the need for adjustment? Does the State review bonds as required by the State program?

(Explain the evaluation methods utilized to evaluate the State's performance in these areas. Identify the number and types of documents reviewed.)

What is the average bond per acre for underground mines? For surface mines?

Liability

- Is the State requiring the bond to be posted before issuing the permit?

- Is the State requiring bond coverage for the period of liability specified in the approved program?

- Do bonding documents clearly specify the scope of work to be guaranteed and the liability assumed under each phase bond?

(Identify the techniques utilized to evaluate the State's performance in these areas.)

Form of Bond

- Are bond instruments properly executed?

- Does the State accept only those forms of bond (e.g., certification of deposit, surety, etc.) approved under the State program?

(Explain the methods utilized to evaluate the State's performance in these areas.)

Alternative Bonding Program (Complete this section if applicable)

- How does the alternative system work? What are its income sources and maintenance levels?

- Is the bonding fund adequate to keep pace with the forfeiture rate on permanent sites?
- Is the fund balance quickly replenished following drawdown, so that delays are generally not necessary for reclamation on forfeiture sites?
- Are forfeiture sites being reclaimed in a timely manner with proper use of fund money?
- Is the State taking prompt action to forfeit any operator bond and contract for work, on sites abandoned by operator?
- Is the State drawing funds from the bonding fund in a timely manner so as to achieve reclamation without unnecessary delay?
- What are the average time lapses between forfeiture and initiation or completion of reclamation and between forfeiture and collection of whatever funds are available?
- What, if any, is the impact of interim permit bond forfeitures on the adequacy and availability of funds for reclamation and the speed with which permanent program forfeiture sites are reclaimed?

d. National Objective Evaluation Topic: State's compliance with program requirements pertaining to historic and cultural resources. The following questions should be addressed to determine how effectively the State is implementing the historic preservation requirements in its approved program (State counterparts to 30 CFR 772.12(b)(8), 779.12(b), 783.12(b), 773.13(a)(3)(ii), 773.12, 761.12(f), 762.11, 810.2(h).

- Of the permit applications received, how many contained evidence that the applicant had contacted the State Historic Preservation Officer (SHPO) to obtain available information on known historic resources and archeological sites?
- How often was the SHPO notified by the regulatory authority that administratively complete permit applications were available for review?
- On how many applications did the SHPO comment?
- The applicant is required to contact State and local historic preservation officials, e.g., the SHPO, to help identify known archeological sites. Is the information supplied by the SHPO consistent with that contained in the permit application?

- In how many cases did the regulatory authority require the applicant to implement completely the SHPO's comments?
- In how many cases did the regulatory authority require the applicant to implement partially the SHPO's comments?
- In how many cases did the regulatory authority reject the SHPO's comments? Is the rejection supported by reasons?
- How many times did someone other than the SHPO comment on the effect of an application on historic or archeological resources? What did the regulatory authority do about those comments?
- How many times did someone request an informal conference on an application because of historic or archeological issues? What was the outcome of any such conference?
- Were there any lands unsuitable petitions filed that involved historic or archeological resources? If so, what was the disposition of the petitions?

In addition to reviewing the regulatory authorities' program on the above points, the SHPO should be contacted for the following information.

- Do applicants for permits to surface mine coal contact your office and request available information on known historic and archeological resources?
- Does the regulatory authority routinely notify you of complete applications to mine?
- On what proportion of the applications of which you are aware do you comment?
- Do you believe your comments are seriously considered by the regulatory authority?

e. Field Evaluation

The field evaluation purpose and scope should be described, together with a rationale for the description of the sample selected. The findings should focus on the permitted operation achieving the purposes of the State program and the Act as they relate to environmental standards, deficiencies, enforcement history, and reclamation.

- Report on the findings of field evaluation. Emphasis should be placed on actual site conditions and contrasted with those depicted in the permit application, to determine if the permit is meeting the standards and conditions of the State program.

- Report on follow-up review of sites examined in previous years. The elements and focus of the review should be specified with an emphasis on whether the permit as implemented has achieved the purposes of the Act, whether deficiencies previously noted have been corrected. If not, have they contributed to the failure to achieve the purposes of the Act.

SEE APPENDIX FOR:

Table 1	Permitting Actions
Table 2	Alternative Bonding Activity

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5. Permitting and Bond Setting Implementation Issues

[Instructions: Describe each major permitting and bond setting implementation issue which has not yet been resolved. Discuss the probable cause of each problem. Indicate actions which have been taken by OSM and the State to bring about resolution of the problem and specify the proposed action plan and timetable for final resolution of the problem. Provide this information under appropriate headings as shown below.]

Issue: (Include cross-reference to problem description discussion in body of report or previous report.)

Probable Cause:

Actions Taken To Resolve Problem:

OSM:

State:

Action Plan/ Timetable Plan Final Resolution:

TABLE 1

PERMITTING ACTIONS

(07/01/85 - 06/30/86)

Application Type	NUMBER OF PERMIT APPLICATIONS						
	Received During Evaluation Period	Pending at Beginning of Evaluation Period	Approved During Evaluation Period	Disapproved During Evaluation Period	Withdrawn During Evaluation Period	Pending at End of Evaluation Period	Other
Repermits and Renewals							
New Permits							
Coal Exploration greater than 250							
less than 250 (notices)			(if applicable)				
Significant revisions							
Other							

TABLE 2

ALTERNATIVE BONDING ACTIVITY (07/01/85 - 06/30/86)	
Starting Balance	$
Pool Income	$
Expenditures	$
Ending Balance	$
Number of Forfeiture Sites Eligible for Funding *	
Number of Sites and Acres Reclaimed	
Permanent Program Sites	
Interim Program Sites	
Average Time Lapse Between Forfeiture and Reclamation	

* Include all sites for which bond was forfeited during the review period, plus all forfeiture sites unreclaimed at the start of the period

Instructions: Itemize all income sources (tonnage tax, permit fees, acreage fees, etc.) either as subcategories of "Pool Income" or in a footnote.

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TABLE 16

BOND FORFEITURES
PERMANENT PROGRAM PERMITS
(07/01/85 - 06/30/86)

	NUMBER	ACREAGE	AMOUNT
Sites in default:			
- Forfeiture proceedings initiated during review period			
- Reclamation initiated by surety			N/A
Bonds forfeited but not collected:			
- At beginning of period			
- At end of period			
Bond collected during period			
Reclamation completed during period:			
- By RA			N/A
- By surety			N/A

TABLE 17

BOND FORFEITURES
INTERIM PROGRAM PERMITS
(07/01/85 - 06/30/86)

	NUMBER	ACREAGE	AMOUNT
Sites in default:			
- Forfeiture proceedings initiated during review period			
- Reclamation initiated by surety			N/A
Bonds forfeited but not collected:			
- At beginning of period			
- At end of period			
Bond collected during period			
Reclamation completed during period:			
- By DA			N/A
- By surety			N/A

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Mr. SYNAR. Jed, that document states that OSM's oversight review is to answer this question: "Are bond amounts set by the regulatory authority to cover the cost of reclamation at all times during the liability period?"

In parenthesis, it states, "Explain fully the methods utilized to evaluate the adequacy of bond amounts. Identify the number in the top of any documents reviewed."

That is it. No standards. No explanation about how to calculate the bonds. Just do it, and tell us how you did it.

Now, at least asking questions about bond adequacy is a partial improvement over the years, but without explicit standards to be followed by the reviewers, how does this answer my concern about consistency among States?

Mr. CHRISTENSEN. As you know, we have developed some bond estimating guidelines. As a rule of thumb about how bonds, when we do permitting oversight reviews should be set, that doesn't mean that there is only one way to do it, and that is why we hesitate to say this is how State, you will set bonds.

That doesn't seem appropriate. It depends on the State and how they want to do it.

However, we go in and make a determination on what we think is adequate, based on the knowledge that we have and methodologies that we use.

Mr. SYNAR. Just a second. I apologize. Let me see if I can get this pinned down a little bit better.

Where a State is a regulatory authority, you state that, "During the 1987 oversight period independent estimates of bond amounts will be prepared using applicable methodology contained in the OSMRE bond handbook when assessing the adequacy of the State bond levels." This will provide a "reference point in evaluating State methodologies in determining if State bond levels have a reasonable basis."

What does that mean?

Mr. CHRISTENSEN. That means, Mr. Chairman, that that is one way of determining if a bond is adequate. We go in and ask the State how did you determine the bond, and then to get a fix on it if we feel like that is an adequate amount, we use our own methodology to determine if it is in the ballpark.

Mr. SYNAR. Have you tested the accuracy of the manual by using it to calculate bonds where the forfeitures have already occurred and comparing them with the results that have actually happened?

Mr. CHRISTENSEN. It has been tested on actual sites.

Mr. SYNAR. Where the forfeitures occurred?

Mr. CHRISTENSEN. Where the forfeitures occurred? If we are talking about the permanent program sites, the sites haven't been reclaimed, so there is no way to test to see if that was an adequate amount.

Mr. SYNAR. Well, let me ask you this. Let me just go through a supposition here. Does it mean that if the calculation for a particular bond is 20 to 30 percent off the calculation by the State, that it will require the State to get additional bonding?

Mr. CHRISTENSEN. We would work with the State to see where the discrepancy was.

Mr. SYNAR. What if the calculations were consistently way off?

Mr. CHRISTENSEN. Your point is well taken. If there is a consistent pattern of under bonding, then I think we would have to work with the State, and we have done that.

For instance, in the State of Alabama, that was a problem. OSM determined that the methodology they were using was inappropriate, so they have changed it so the bonds are now adequate.

Mr. SYNAR. What actions are you going to take?

Mr. CHRISTENSEN. In which sense?

Mr. SYNAR. If there is a consistent gap there?

Mr. CHRISTENSEN. If there is a consistent gap, then—it is pointed out through the oversight process. We point that out to the State, and we come up with an action plan on how they are going to make correction in their program so that doesn't continue.

Mr. SYNAR. What are you going to do to make them do it?

Mr. CHRISTENSEN. There are lots of things you can do. Hopefully, it is done on a voluntary basis. Training has been very successful. I think there is a list of six States where we have gone in and actually done training of those staffs so they know how to determine if a bond is adequate. That is probably the best way.

If a State is reticent to do that, you can condition their grant that they will not get Federal funds unless they do something about their bond setting, but generally we haven't had that problem. We have been able to work with these States to make the corrections voluntarily.

Mr. SYNAR. You can't withhold Federal funds unless you disapprove the program, can you?

Mr. CHRISTENSEN. No, that is not correct. We can condition a grant until they take appropriate action.

Mr. SYNAR. Do you have a legal basis to support that position?

Mr. CHRISTENSEN. As you know, we pay 50 percent of the States operating costs of the regulatory program. It is the 50 percent that we kick in that I am talking about.

Mr. SYNAR. Can we get an explanation in writing on that?

Mr. CHRISTENSEN. Sure.

Mr. SYNAR. OK.

[The information follows:]

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

JUL 17 1986

MEMORANDUM

TO: James Workman, Deputy Director
Operations and Techincal Services
Office of Surface Mining

FROM: Christopher W. Warner, Acting Assistant Solicitor
Branch of Governmental Relations
Division of Surface Mining

SUBJECT: Grant Conditions

In a recent hearing before the House Subcommittee on Environment, Energy and Nature concerning the adequacy of bonds to ensure reclamation of surface mines, Representative Synar questioned the Director on how the Office of Surface Mining Reclamtion and Enforcement would encourage the States to improve and upgrade their bonding programs. The Director responded that hopefully most actions could be accomplished on a voluntary basis. However, if a state was reticent, OSMRE would consider conditioning its administration and enforcement grant so that funds would be limited or withheld until the appropriate action had been taken. Representative Synar questioned the legal basis for such actions and requested an explanation in writing.

The Director was correct in his statement concerning his authority to condition grants to encourage certain states to make regulatory changes. The operative section of the Surface Mining act is §705, which provides in pertinent part:

> (a) The Secretary is authorized to make annual grants to any State for the purpose of assisting such State in developing, administering and enforcing State programs under this Act. Except as provided in subsection (c) of this section, such grants shall not exceed 80 per centum of the total costs incurred during the first year, 60 per centum of the total costs incurred during the second year, and 50 per centum of the total costs incurred during each year thereafter.

The language of this section does not specify a certain amount, rather it specifies only that grant funds may not exceed a certain ceiling. Accordingly, implied within this authority is the ability to grant any percentage of funds below this amount. See 36 Comp. Gen 526 (1957)("not to exceed"), 19 Comp. Gen. 892

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("not to exceed"). The conditioning of a grant in an amount below the specified ceiling, would come within this authority. Accordingly, we find no violation of Section 705.

Turning next to the specific issue of "grants" law, again we find that the Director has discretionary authority to condition grants under the broad authority granted the Secretary to administer the Surface Mining Act. 30 USC 1211, Sec. 201(c). One of the most fundamental principles of "grant law" is that acceptance of a grant of Federal funds which is not unconditional but is subject to conditions which must be met by the grantee creates a valid contract between the United States and the grantee. 50 Comp. Gen. 470, 472 (1970); 42 Comp. Gen. 289, 294 (1962).

Because Federal assistance is predicated upon an "offer" of supportive dollars from the United States, the grantee chooses to participate and logically chooses to keep participating. If the grantee agrees to clearly stated terms, in this case the conditioning of funds until certain bonding requirements are met, in exchange for Federal funds, its complaint of their onerous nature should be of no matter. (Indeed, in this case it would be specious to argue the burden of compliance since the Director is requiring the State only to meet the specific mandates already set out in the Surface Mining Act.)

As a matter of contract law, the State can choose not to participate. Its best alternative, therefore, is to calculate its cost-benefit ratio and decide whether or not to continue. Accordingly, as a matter of contract law, the conditioning of a grant is merely part of the contractual relationship which exists.

To summarize, we find that the Director has ample authority to condition grants in the manner specified and that such conditions do not violate Section 705 of the Surface Mining Act or other principles of grant law.

Mr. SYNAR. Is somebody writing all this down for you all?

Mr. CHRISTENSEN. We will use the transcript of the proceeding.

Mr. SYNAR. Some of the operators in my district are telling me that the estimates used by OSM based on an earlier manual, guild the lily. In fact, reclamation can be done more cheaply in Oklahoma than OSM's figures based upon a manual developed by an outside consultant.

I have never reclaimed a mine, so I don't know who is right. I will just be honest with you, but this raises, I think, an important policy question.

What have you done to ensure that the new bonding manual which has not been completed will properly account for regional cost differences?

Mr. CHRISTENSEN. That is why a bonding manual was put together, to give the States an idea of the kinds of things that ought to be considered.

That is also the reason it has been determined to not make our bonding manual required use by all the States, because of the regional differences.

Mr. SYNAR. You know, if it is set too high, what you do is you hurt the coal guy. If you set it too low, the residents can potentially be hurt.

What kind of things are you all going to do to ensure the setting of the bonds is not too high or too low?

Mr. CHRISTENSEN. Well, I think that if people will follow the guidelines that we have set out, or similar ones of their own, then they can fairly make those determinations.

Mr. SYNAR. Does that allow for public comment?

Mr. CHRISTENSEN. Oh, it has been. The manual is no secret. It has been looked at preliminarily, and when it is put out in a final form, that will be put out for wide distribution, certainly.

Mr. SYNAR. When an oversight reviewer looks at a State, how much time does he spend actually reviewing State records?

Mr. CHRISTENSEN. Now, if we are talking about a permitting oversight team, they go into a State anywhere up to 1 week to 3 weeks depending on the size of the program.

Mr. SYNAR. If he reviews the bond adequacies on specific permits, and recalculates the bond amount, how long do you estimate it takes to review one permit on bond adequacy?

Mr. CHRISTENSEN. It can take anywhere from 4 to 8 hours.

Mr. SYNAR. So, in any given oversight review which involves many issues, not that many permits can actually be reviewed for bonding adequacy. What is OSM doing to develop a technique by which more bonds can be reviewed for adequacy, taking into account relevant State-by-State differences?

Mr. CHRISTENSEN. What is the question again?

Mr. SYNAR. What is the OSM doing to develop a technique by which more bonds can be reviewed for adequacy and in taking into account the relevant State-to-State differences?

Mr. CHRISTENSEN. I don't know that a larger sample was necessarily needed. I think it is the quality of the sample is what we are concerned about, the quality of the review.

You can determine a pattern if there is a problem, we can determine a pattern fairly quickly.

Mr. SYNAR. The answer is nothing, isn't it?

Mr. CHRISTENSEN. No, that isn't the answer. You are assuming, Mr. Chairman, that a larger sample needs to be taken, and I am not following that assumption.

Mr. SYNAR. Please do read this transcript. Question and response.

The law provides that the Secretary may approve alternative systems for bonding as long as they meet the statutory objective to, "assure the completion of the reclamation plan if the work had been performed by the regulatory authority."

Jed, do you think it would be a good idea for some States to use alternative bonding systems as a way of addressing bonding problems?

Mr. CHRISTENSEN. The bond pool has proved to be fairly successful in some States. There may be other ways.

Mr. SYNAR. When asked by GAO about the criteria to evaluate the West Virginia and Pennsylvania alternative bonding funds, OSM could not supply them.

Only West Virginia had an actuarial study done, and that was limited to 1 year.

Now, millions of dollars are involved in these funds. Without any of this analysis, how can OSM justify approval of these funds as meeting the statutory requirement I just quoted?

Mr. CHRISTENSEN. I think you make a very good point, Mr. Chairman, and that is the reason we are going in and doing special studies on these bond pools.

Mr. SYNAR. In October 1985, a study by Pennsylvania, a draft of which was dated January 1984, shows that $110 million will be needed to reclaim existing forfeited and unreclaimed sites.

As of January 16, however, there is only $12.1 million in the fund. How does the Pennsylvania fund, which OSM approved, meet the requirements of the law?

Mr. CHRISTENSEN. I understand that the State bond pool in Pennsylvania is divided up into several funds, one of which covers interim bond sites.

The State of Pennsylvania is very concerned about this, and I understand they are taking aggressive action in their State legislature to address this problem.

Mr. SYNAR. Let me ask you a hypothetical. If the Governor in the State of Disarray was to come to you, and you had oversight responsibility, and he came to you today with a proposal for an alternative bonding system, what features would you look for for that Governor's plan, to make certain the plan was well designed and meets the statutory requirements?

Mr. CHRISTENSEN. We would be concerned from a actuarial standpoint about what was the potential liability, and there is a whole series of issues that would be looked at.

I am not an actuary, but there are folks that would make those determinations. I can give you that information if you are interested.

Mr. SYNAR. Do you have criteria?

Mr. CHRISTENSEN. Certainly.

Mr. SYNAR. We sure would like that submitted for the record, and I will hold the record open for 3 weeks on that.

[The information follows:]

Item #7

The factors which OSMRE would use to evaluate a proposed alternative bonding program would include those used in analyzing existing alternative bonding programs. OSMRE's annual oversight evaluation format sets forth the following questions to be addressed at a minimum in evaluating alternative bonding programs.

- How does the alternative system work? What are the income sources and maintenance levels?
- Is the bonding fund adequate to keep pace with the forfeiture rate on permanent sites?
- Is the fund balance quickly replenished following drawdown so that delays are generally not necessary for reclamation on forfeiture sites?
- Are forfeiture sites being reclaimed in a timely manner with proper use of fund money?
- Is the State taking prompt action to forfeit any operator bond and contract for work on sites abandoned by operators?

- Is the State drawing funds from the bonding fund in a timely manner so as to achieve reclamation with unnecessary delay?

- What are the average time lapses between forfeiture and initiation or completion of reclamation and between forfeiture and collection of whatever funds are available?

- What, if any, is the impact of interim permit bond forfeitures on the adequacy and availability of fund for reclamation and the speed with which permanent program forfeiture sites are reclaimed?

OSMRE has utilized special studies to examine alternative bonding systems. In such studies, OSMRE analyzes the impact of various income levels, forfeiture rates, estimated reclamation costs and fund stability on the alternative bonding program established by a state. These factors could also be used in evaluating a proposed alternative bonding program.

Mr. SYNAR. Does such a fund need an adequate mechanism for replenishing the money?

Mr. CHRISTENSEN. Yes.

Mr. SYNAR. What qualifies as an adequate replenishing mechanism?

Mr. CHRISTENSEN. I am not an actuary. If you would like this kind of specific information, we would certainly be glad to provide it.

Mr. SYNAR. I will hold the record open for 3 weeks for that, too.

[The information follows:]

In order to determine the adequacy of the replenishing mechanism one must compare the expected forfeiture rate and the expected shortfall in individual bonds against the expected income from the supplemental replenishment mechanism.

If the replenishment mechanism is capable of maintaining a viable pool to draw from in supplementing individual bond forfeitures then the replenishment mechanism is adequate. Because forfeiture rates, adequacy of individual bonds, and the size of individual permit liabilities vary considerably from State to State, such an evaluation must be done on a State by State basis.

Mr. SYNAR. GAO showed us two sites involving acid mine drainage, where about 60 percent of the bond had been released, and the remaining bond was being used to treat the water.

What will happen if the money runs out?

Mr. CHRISTENSEN. On an interim site, eventually it would have to be the State's responsibility to take over that site.

Mr. SYNAR. Who would pay for it, the State?

Mr. CHRISTENSEN. The State or the operator, if they could find them.

Mr. SYNAR. How many sites are involved in this kind of situation?

Mr. CHRISTENSEN. I have no idea.

Mr. SYNAR. Can you try to get us a number on that?

Mr. CHRISTENSEN. I will try to come up with a figure.

[Information not supplied at time of printing.]

Mr. SYNAR. I understand that although some inspectors object to it, they are releasing 60 percent of the bond in a phase I release, even when it is clear that the acid rain drainage problems are going to require special treatment indefinitely.

Under section 519(c) of the statute, it states that bonds may be released in whole or in part, therefore suggesting some of the bond could be held back.

What has OSM done to address the problems created by acid water drainage situation?

Mr. CHRISTENSEN. Acid drainage problems are not supposed to exist. The mine reclamation plan is set up in such a way that when reclamation is done, there won't be acid mine drainage.

Mr. SYNAR. But they do exist.

Mr. CHRISTENSEN. It does exist, that is correct.

Mr. SYNAR. So, what are you going to do?

Mr. CHRISTENSEN. As far as what?

Mr. SYNAR. In solving the problem?

Mr. CHRISTENSEN. The problem of adequate bond to take care of those?

Mr. SYNAR. Yes. Are you going to work with the States, leave it up to the States?

Mr. CHRISTENSEN. At this point, we have to make sure that the reclamation plan will take care of that problem so the problem doesn't exist.

Mr. SYNAR. Let me go on to something else. GAO described a practice called rollover. Is that practice consistent with public notice requirements of section 519?

Mr. CHRISTENSEN. That is something that I am not familiar with.

Mr. SYNAR. OK. That pretty well cuts some questions off that we wanted to ask you about.

What will you do to make certain that the notice requirements of section 519 are complied with?

Mr. CHRISTENSEN. As far as public comment on release of bond?

Mr. SYNAR. Yes.

Mr. CHRISTENSEN. In the permanent program, I think it is very clear what is required, and I don't have a problem there.

In the interim program, again since there was no bond required, it is hard to require them to do anything other than follow their own State program.

Mr. SYNAR. In October 1984, the Federal district court issued an order ruling the Department's regulations allowing incremental bonding and phased bonding were inconsistent with the act. There is no stay of that order, right?

Mr. CHRISTENSEN. That is correct. We are appealing that.

Mr. SYNAR. All right. Many States continue to have incremental bonding. Doesn't the Department take a risk of being held in contempt of court and wasting its resources on litigation when it fails to take corrective action or to seek to stay a situation like this?

Mr. CHRISTENSEN. I believe the way that works is a bond is required for at least the initial mining period, which is 5 years.

Mr. SYNAR. That doesn't answer my question. My question is, let me go back to it, aren't you in risk of being held in contempt?

Mr. CHRISTENSEN. And the States have been notified through 732 letters, which is part of the OSM regulations that they will come into compliance with that.

Mr. SYNAR. Provide for the record, if you would, a list when they were notified, and what happened.

[The information follows:]

Item #10

Below is a list of States which were notified through the 30 CFR Part 732 process to amend their programs to reflect the recent court ruling on incremental bonding.

The State regulatory authorities are in the process of responding to OSMRE's notification on incremental bonding as part of their regulation revision efforts to address all regulatory reform issues.

State	Date Notified	Status
Alabama	05/22/85	On 7/19/85 State provided schedule for State rulemaking action.
Alaska	05/07/86	Awaiting schedule from State on rulemaking.
Colorado	05/07/86	Awaiting schedule from State on rulemaking.
Indiana	05/22/85	On 7/29/85 State provided schedule for State rulemaking action.

Illinois	05/20/85	On 3/21/86 State submitted proposed regulations for review.
Kansas	12/17/85	On 5/13/86 State submitted proposed regulations for OSMRE review.
Kentucky	02/22/85	Proposed amendments for OSMRE review expected late 1986.
Louisiana	07/09/86	Awaiting schedule from State on rulemaking.
Maryland	07/08/86	Awaiting schedule from State on rulemaking
Missouri	06/11/85	Awaiting schedule from State on rulemaking.
North Dakota	02/03/86	On 4/1/86 State provided schedule for State rulemaking action.

Ohio	11/06/85	On 5/16/86 State submitted proposed amendments for OSMRE review.
Oklahoma	07/15/85	On 10/11/85 State provided schedule for State rulemaking action.
Texas	05/22/85	On 7/23/85 State provided schedule for State rulemaking action.
Utah	05/12/86	Awaiting schedule from State on rulemaking.
Virginia	03/25/85	On 11/8/85 State submitted proposed amendments for OSMRE review.

Final 30 CFR 732 letters are being developed for Iowa and New Mexico. The draft listings for these States include the notification on incremental bonding.

Arkansas will be notified of this requirement as part of the review of the State's regulatory reform amendment package.

Current State programs for Montana, Pennsylvania, West Virginia and Wyoming do not include incremental bonding provisions.

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Mr. SYNAR. All right. To develop the information reported, GAO created its own data base by obtaining information from State files and computer disks. OSM has been proposing to conduct studies on bond studies.

What has OSM done to systematically collect the basic information needed to conduct such bond studies and to avoid the tedious process of going through individual State permit files?

Mr. CHRISTENSEN. The OSM has no intention of looking at every State permit file.

Mr. SYNAR. I understand that. But what have you done to try to collect this stuff to where you could use it and not have to go through State files?

Mr. CHRISTENSEN. As far as bond information?

Mr. SYNAR. Yes.

Mr. CHRISTENSEN. We go in and examine on an oversight basis the various permits to see if an adequate bond is there.

Mr. SYNAR. Most of the studies which have been conducted by OSM regarding bonding and other problems are, "special studies." Generally, who conducts these?

Mr. CHRISTENSEN. The team members are made up of people from the technical centers, generally.

Mr. SYNAR. Who determines the subject, scope, and methodologies of these studies in the field office. Is it the field office or somebody in Washington?

Mr. CHRISTENSEN. Mr. Chairman, I am going to put out information that tells them exactly what we want them to look at.

Mr. SYNAR. So, it is out of Washington, right?

Mr. CHRISTENSEN. That is right. It will be in the future. They can certainly make a proposal of what they would like to look at, but we want to make sure that is adequate.

Mr. SYNAR. When are you going to do that?

Mr. CHRISTENSEN. As I mentioned in my initial testimony, we have sent out information to the field offices giving them that kind of guidance.

Mr. SYNAR. Can we have copies of that for the record, too?

Mr. CHRISTENSEN. Certainly.

[The information follows:]

Item #11

We are providing a copy of a guidance memo from Headquarters to the field relating to special studies.

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United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

JUN 24 1986

Memorandum

To: Assistant Director, Eastern Field Operations
Assistant Director, Western Field Operations
Field Office Directors

From: James W. Workman, Deputy Director
Operations and Technical Servic JAMES W. WORKMAN

Subject: Planning and Management of Special Studies

The purpose of this memorandum is to clarify the meaning of "special studies" and establish procedures for their planning, approval, and dissemination of the results.

Special studies are distinct planned investigations of specific components or subpopulations of an approved State program. They originate from the need to evaluate those areas critical to effective program implementation, or further investigate problems identified as a result of statistical sample inspections or from other routine oversight activities. Special studies consist of a series of inspections and associated file reviews which are designed to answer the question for which the study was planned through reasonable conclusions based on sound analysis of the facts.

The preliminary and final results of special studies are currently disseminated through annual or periodic evaluation reports. Current practices, however, do not adequately enable the Assistant Directors for Field Operations and Headquarters management to be aware of and affect special studies prior to their initiation, or for adequate dissemination of the final study results. Therefore, the following procedures shall be implemented, effective immediately. These procedures will apply to special studies conducted for those segments of the annual report format that require a series of inspections in order to make an evaluation, such as the national oversight objectives, bond releases, five day inspections, etc., and any special studies requiring inspections which are conducted in addition to those required in the annual report format. Other segments of the annual report format and its attendant charts which consist of routine administrative case reviews or record tabulations, and routine State action follow-up inspections are not subject to the procedures set out in this memorandum.

At the beginning of each evaluative year and prior to initiating any special study thereafter, each Field Office Director shall develop and submit for approval by the appropriate Assistant Director for Field Operations, a special study proposal for each planned special study. In order to assure consistency in planning and reporting, each special study proposal must be developed according to the format in Attachment 1, and address each topic therein. Please note the instructions concerning special study coding. As a part of the planning process and before approval, the Assistant Director for Field Operations will provide the Assistant Director for Program Operations a two-week comment period for each special study planned. Upon approval, the Field Office Directors shall then inform the appropriate State officials of the study and invite their participation as necessary.

After the special study is completed, the field office will prepare a concise written Summary of Findings as outlined in Attachment 2 and address each of the topics therein. The study results should be submitted to and discussed with the appropriate Assistant Director for Field Operations, and a copy forwarded to the Assistant Director for Program Operations. A meeting should be subsequently scheduled to discuss the study results with State officials and to inform them of the measures necessary for the resolution of any problems identified. Information concerning the special study results will continue to be included in periodic and annual evaluation reports as well.

Finally, as a one time effort and for informational purposes, I am asking you to prepare plans in accordance with this memorandum for each special study currently underway and forward them to the appropriate Assistant Director for Field Operations and the Assistant Director for Program Operations for review. Please submit them by June 30, 1986.

Attachments

Attachment 1

Proposal for a Special Study

Date:

Field Office: State:

|S| |S| | | | |

In addition to the MEIR SS code currently entered, each special study must be assigned a sequential number from 111 to 999 or a logical three letter acronym. Do not leave any blanks in the code blocks. The code must then be used as the "Type of Inspection" code for all inspections subject to the special study. The METR code BR, should no longer be used alone since all bond release inspections should be conducted as a special study. Example:

|S| |S| |1| |2| |3| or |S| |S| |O| |S| |R|.

I. Purpose of the special study (state as a question that the study is expected to answer):

II. Background (why is the question being asked; does the special study pertain to an OSMRE national oversight objective?)

A. Briefly describe the OSMRE reasons or findings that indicate the existence of the suspected problem:

B. Effects that the suspected problem has or may have on the State's approved program:

III. Methodology of the study (briefly discuss how the question will be answered):

A. Procedure to be used to collect the data:

B. Resources required to conduct the study:

C. Estimated initiation and completion dates for the study and written Summary of Findings:

IV. Coordination with the State Regulatory Authority (briefly discuss the extent of the State's involvement with the special study and/or the manner in which the State will assist in conducting the study, as appropriate):

V. Approval:

Assistant Director for Field Operations

Date

Attachment 2

Outline for the Written Summary of Findings

1. Purpose of the study (stated as the question to be answered):

2. Summary of data collected:

3. Brief analysis and discussion of data:

4. Summary and Conclusions (address the following):

   - o answer to question(s) asked in the proposal for a special study
   - o note any qualifications that need to be placed on the validity or accuracy of the answer
   - o what should be done with the answer (resolution of the problem, are additional studies needed, etc.)

Mr. SYNAR. A special study of West Virginia was recently done to examine the adequacy of bonds in selected sites. It looked only at the bonds themselves, and not at the special reclamation fund.

In your opinion, does it make sense to study only the bonds and not the special fund to determine if there was adequate money to assure the reclamation in West Virginia?

Mr. CHRISTENSEN. If warranted, we would look at the fund.

Mr. SYNAR. Do you need to examine both?

Mr. CHRISTENSEN. It depends on the situation. There are occasions when we would, yes.

Mr. SYNAR. If important decisions on national bonding policy are to be made based on the results of OSM's, "special studies," why isn't someone in Washington or elsewhere providing direction as to what studies should be conducted, and how?

Mr. CHRISTENSEN. Well, as I indicated we will provide much more information to them.

Mr. SYNAR. You will be?

Mr. CHRISTENSEN. We have, and we will continue to do so.

Mr. SYNAR. OK. OSMRE has stated a particular concern about bond availability in its management action plan. Do you have data on the total number of operators, including those affected by the insolvency of their surety companies which requested bonds, but which were not able to get them?

Mr. CHRISTENSEN. Yes, Mr. Chairman.

Mr. SYNAR. Could you submit that to the record?

Mr. CHRISTENSEN. Certainly.

[The information follows:]

Item #12

Statistics such as these are not kept by OSMRE. However, information from our activities in Tennessee and Oklahoma are indicative of the type of problems being faced by operators.

On October 1, 1984, the State transferred 221 permanent program permits to the Tennessee Federal Program, all of which required modification to make the bond payable to the U.S. Treasury. To date, operators have replaced or had reassigned 194 of the 221 permanent program bonds.

The operators who failed to replace bonds on the other 27 permits offered the following reasons (cessation orders were issued on the 26 sites where operations had commenced).

- Three surety companies in Tennessee failed to meet U.S. Treasury bonding requirements, making their bonds unacceptable. The operators cannot find other sureties which will bond them, and they have insufficient assets for collateral bonds.

- Two sureties are in bankruptcy. Operators with bonds from these sureties also cannot find surety

companies willing to bond them and have insufficient assets for a collateral bond.

- Companies are now bankrupt making bond replacement impossible.

- The site was never disturbed; therefore, no need exists for a reclamation bond.

- The company is being sold; the purchaser will be responsible for obtaining a bond.

Currently, OSMRE has forty-five permit applications in Tennessee that are technically adequate. Of these, five have not been issued permits because of failure to post a bond. Their reasons for not posting bonds include inability to find a surety to post the bond, insufficient assets to post a collateral bond, and management problems.

Union Indemnity Insurance Company of New York (Union Indemity) was placed in liquidation by the Supreme Court of New York County, New York, on July 16, 1985. In Oklahoma, Union Indemnity had bonded 31 permits for 11 mining companies. Five of the eleven companies were actively mining coal, of which four have received replacement bonds and one has filed for bankruptcy. None of the inactive permits or permits in

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reclamation have been rebonded. Of those four companies that obtained replacement bonds, one obtained a bond immediately, one sold out to a company able to post bond, and two posted bond in the form of certificates of deposit. The active operator who subsequently filed for bankruptcy made 21 unsuccessful inquiries for replacement bond. Another company reportedly made 16 inquiries for bond without success. The five remaining companies did not submit reports concerning attempts to obtain replacement bond.

Mr. SYNAR. The MAP states, "in some instances premiums being charged to operators are out of line with the risks involved and exceed normal underwriting standards."

It also states that by finding new alternatives to the current bonding process, "the premiums charged the operators would more clearly reflect the actual risk."

These statements that I just read presume some data, and familiarity with the premium setting process used by bond companies.

Can you describe for us the information which OSM possesses on premium levels, collateral required by surety companies, the risk assessment processes, for the record?

Mr. CHRISTENSEN. Mr. Chairman, we could attempt to do that. That isn't necessarily our responsibility, nor do we have authority to deal with sureties and tell them how much they can charge, what they require.

Mr. SYNAR. But the point is, Jed, you made some conclusions based upon that information, and we want to know whether that information was available to you, and if it is, let's look at it.

Mr. CHRISTENSEN. Mr. Chairman, we will provide you whatever information we have, yes.

[The information follows:]

In the course of rulemaking on bonding issues, comments have been received from the surety industry and included in the administrative record. A copy of this material can be provided upon request.

Mr. SYNAR. How many cases is this data for?

Mr. CHRISTENSEN. I have no idea. We will have to collect that information for you.

Mr. SYNAR. Just a second. I will ask unanimous consent that the rest of the questions that I have will be submitted into the record.

I have to go down to impeach a Federal judge. Dick, do you want to close it out here?

Mr. ARMEY. I wanted to make a few observations, in closing.

I want to thank the chairman for holding these hearings. They have been interesting. I particularly was pleased to hear the excellent testimony of the General Accounting Office, an independent agency of the Federal Government.

Mr. SYNAR. As of right now, yes. It is still legislative.

Mr. ARMEY. I want to see if I can help you all to understand the way I see it.

Certainly I am convinced in my own mind that the SMCRA Act of 1977 was probably an unwise one, but it was an effort, and I am sure a good faith effort, to respond to a whole host of interests, some I call legitimate, some I call presumptive.

Now, the problem with such an act is we give legitimacy to the presumptive interest, and allow it to influence the handling of privately owned land.

The other problem, the one I am more concerned about, is this: An individual is capable of negotiating contracts for the use and restoration of his land, caring for his own interests and protecting them. Legislation such as this, however, has the effect of sending him the message that he can reduce the extent to which he is going to be diligent in examining his own interests and protecting

negotiations for them, because the Government is going to be there.

Now, I fear that is what we have had, and that has given us all kinds of complicated problems. Where reclamation isn't performed, complaints have been filed, litigations, and so on down the line.

The fact is, once the legislation is passed, and we establish the appropriate agencies and hire the personnel, such as yourself, it is your responsibility to execute and administer that legislation.

And in this case it becomes necessary for the protection of all parties. Those who have historic legitimate interest, and those who have one that has been historically presumptive, but now made legitimate by this act.

It is the job of this committee to push you along, as it were, to encourage you to do so, and to give surveillance to your activity.

We encourage you to do so. We have seen that the chairman is most diligent, and rightfully so, in pursuing that responsibility, and I would not shirk it myself even in the case of legislation that I disagreed with.

So, I would like to encourage you, again, to move forward with as much dispatch as possible. I would be more than happy to work with you in any way possible, and I do believe, Mr. Chairman, it may be very much in the public interest and the interest of all parties interested in surface mining, that we reexamine the legislation and see if, perhaps, it can be amended to make everybody's life better.

It is fairly clear to me that we have a situation now that is not acceptable, and we must move forward to find solutions. I am encouraging you to do the best you can, and move forward as fast as possible.

Mr. SYNAR. Thank you, Dick. Thank the minority. Thank the staff. Thank GAO. Jed, thank you. Thank your crew. I know it takes a lot of time to get prepared for this subcommittee.

I don't need to say any more. We will be back very shortly. We are going to ask you about it again the next time you are in here. So, we would like to see some action.

I apologize for going through some of these questions very quickly today, but I have to go down and vote on an impeachment, but we will see you in August, OK?

That adjourns the meeting.

[Whereupon, at 11:23 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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